

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

* * * * *

VIRGINIA PRUST, individually and
as Special Administrator on behalf
of the Estate of Valmore Prust,

Plaintiff,

-vs-

Case No. 14-CV-143-WMC

WEYERHAEUSER COMPANY
and METROPOLITAN LIFE
INSURANCE COMPANY,

Madison, Wisconsin
December 3, 2015
9:10 a.m.

Defendants.

* * * * *

JANET PECHER, individually and
as Special Administrator on behalf
of the Estate of Urban Pecher,

Plaintiff,

-vs-

Case No. 14-CV-147-WMC

WEYERHAEUSER COMPANY,
3M COMPANY, and METROPOLITAN
LIFE INSURANCE COMPANY,

Defendants.

* * * * *

STENOGRAPHIC TRANSCRIPT OF DAUBERT MOTION HEARING
HELD BEFORE CHIEF JUDGE WILLIAM M. CONLEY

Lynette Swenson RMR, CRR, CBC
U.S. District Court Federal Reporter
United States District Court
120 North Henry Street, Rm. 520
Madison, Wisconsin 53703
608-255-3821

1 * * * * *

2 JANICE SEEHAFFER, individually and
3 as Special Administrator on behalf
4 of the Estate of Roger Seehafer,

5 Plaintiff,

6 -vs-

Case No. 14-CV-161-WMC

7 WEYERHAEUSER COMPANY,

8 Defendant.

9 * * * * *

10 KATRINA MASEPHOL, Individually
11 and as Special Administrator on
12 behalf of Richard Masephol,

13 Plaintiff,

14 -vs-

Case No. 14-CV-186-WMC

15 WEYERHAEUSER COMPANY,
16 3M COMPANY, and METROPOLITAN
17 LIFE INSURANCE COMPANY,

18 Defendants.

19 * * * * *

20 WESLEY and THERESA SYDOW,

21 Plaintiffs,

22 -vs-

Case No. 14-CV-219-WMC

23 WEYERHAEUSER COMPANY,
24 3M COMPANY, and METROPOLITAN
25 LIFE INSURANCE COMPANY,

Defendants.

* * * * *

1 * * * * *

2 MILTON and KATHY BOYER,

3 Plaintiffs,

4 -vs-

Case No. 14-CV-286-WMC

5 WEYERHAEUSER COMPANY,
6 3M COMPANY, and METROPOLITAN
7 LIFE INSURANCE COMPANY,

8 Defendants.

9 * * * * *

10 DIANNE JACOBS, individually and
11 as Special Administrator on behalf
12 of Rita Treutel,

13 Plaintiff,

14 -vs-

Case No 12-CV-899-WMC

15 RAPID AMERICAN CORPORATION
16 and WEYERHAEUSER COMPANY,

17 Defendants.

18 * * * * *

19 BRIAN HECKEL, Individually and
20 as Special Administrator on behalf
21 of Sharon Heckel,

22 Plaintiff,

23 -v-

Case No. 13-CV-459-WMC

24 CBS CORPORATION, GENERAL
25 ELECTRIC COMPANY, METROPOLITAN
LIFE INSURANCE COMPANY,
and WEYERHAEUSER COMPANY,

Defendants.

* * * * *

1 APPEARANCES:

2 For the Plaintiff:

Motley Rice

3 BY: NATHAN FINCH

JOHN HERRICK

4 3333 K St. NW, Ste. 450

Washington, DC 20007

5 Cascino & Vaughn Law Offices, Ltd.

6 BY: ROBERT MCCOY

220 South Ashland Avenue

7 Chicago, Illinois 60607

8 Galihier DeRobertis Waxman

9 BY: ANTHONY CARR

ALYSSA SEGAWA (telephonically)

610 Ward Avenue

10 Honolulu, Hawai'i 96814-3308

11 For Defendant Weyerhaeuser Company:

Forman Watkins Krutz & Tardy, LLP

12 BY: JOSHUA METCALF

TANYA ELLIS

13 C. MITCH MCGUFFEY

T. BENTON YORK

14 200 South Lamar Street, Ste. 100

Jackson, Mississippi 39201

15 For Defendant 3M Corporation Company:

16 Segal McCambridge Singer Mahoney, Ltd.

BY: JASON ECKERLY

17 233 South Wacker Drive, Ste. 5500

Chicago, Illinois 60606

18 For Defendant Metropolitan Life:

19 von Briesen & Roper

BY: SMITHA CHINTAMANENI

20 411 East Wisconsin Avenue, Ste. 1000

Milwaukee, Wisconsin 53201

21 (appearing telephonically)

22

23

24

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I-N-D-E-X

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* * * * *

(Proceedings called to order.)

THE CLERK: Case Number 14-CV-161, *Roger Seehafer v. Weyerhaeuser Company and others*. Case Number 14-CV-286, *Milton Boyer and others v. Weyerhaeuser Company and others*. Case Number 14-CV-186, *Richard Masephol v. 3M Company and others*. Case Number 14-CV-143, *Virginia Prust v. Weyerhaeuser Company and others*. Case Number 14-CV-147, *Janet Pecher v. Weyerhaeuser Company and others*. Case Number 14-CV-219, *Wesley Sydow v. Weyerhaeuser Company and others*. Case Number 12-CV-899, *Dianne Jacobs v. Owens-Illinois, Inc. and others*. Case Number 13-CV-459, *Brian Heckel v. 3M Company and others* called for a Daubert hearing.

May we have the appearances, please.

MR. FINCH: Good morning, Your Honor. Counsel. My name is Nate Finch. I'm with Motley Rice. My

1 colleagues, John Herrick and Meredith Clark, are here as
2 well.

3 MR. HERRICK: Morning, Your Honor.

4 MR. FINCH: And we also have Mr. Robert McCoy
5 and Allen Vaughn from the Casino Vaughn law firm on
6 behalf of the plaintiffs.

7 MR. MCCOY: Morning.

8 MR. CARR: Good morning, Your Honor. Anthony
9 Carr on behalf of plaintiffs as it relates to claims
10 against the 3M Company.

11 THE COURT: And there wasn't enough seats for
12 you up here? Was that the problem?

13 MR. CARR: I would be more than glad to join
14 the bar.

15 THE COURT: I think you should if you intend to
16 actually speak at this hearing.

17 MR. CARR: I will not be speaking.

18 THE COURT: So your appearance is simply for
19 that purpose.

20 MR. CARR: Yes.

21 THE COURT: All right.

22 MR. METCALF: Your Honor, Joshua Metcalf for
23 Weyerhaeuser. Also have Tanya Ellis --

24 MS. ELLIS: Morning, Your Honor.

25 MR. METCALF: -- Mitch McGuffey and Benton

1 York.

2 THE COURT: All right. I'm sorry, were there
3 other appearances?

4 MR. ECKERLY: One more appearance. Jason
5 Eckerly for 3M Company.

6 THE COURT: All right. I welcome you all. I
7 believe we may have someone on the -- on my bench phone,
8 which may have been overkill because I don't know that
9 we're going to have video conferencing this morning.
10 Perhaps we are. But just so there's an indication,
11 perhaps you could unmute anyone on the phone and
12 indicate for my benefit, if not for the court reporter,
13 who you are.

14 MS. CHINTAMANENI: Good morning, Your Honor.
15 Smitha Chintamaneni on behalf of Metropolitan Life
16 Insurance Company.

17 THE COURT: All right. Very good.

18 MS. SEGAWA: Morning, Your Honor. This is
19 Alyssa Segawa (unintelligible).

20 THE COURT: All right. It's -- you're not
21 appearing for the record but I appreciate your
22 identifying yourself for the benefit of the Court. As I
23 say, because there was a plan, whether we need it or not
24 for video testimony, you're on the bench phone, but
25 you're welcome to listen in as long as you keep your

1 mute button on.

2 With that said, welcome all those who are here in
3 court today and want to make clear what it is you're
4 attempting to accomplish. You don't have to poise to
5 stand yet, but I'll give you an opportunity to speak
6 briefly. I'm not sure, since it's not your motion, that
7 you'll be the first to speak, which is why I
8 particularly want to indicate, Mr. Finch, that there's
9 no need to be poised.

10 With that said, we are here on a motion by
11 Defendant Weyerhaeuser under Rule 7 -- Rule of Evidence
12 702 and Daubert to exclude certain plaintiffs' expert
13 witnesses: Frank Parker, Henry Anderson, and Jerrold
14 Abraham, the latter two being I guess at least Ph.D.s,
15 actually maybe both are medical doctors, and I wanted to
16 try to focus the discussion, and I am going to allow
17 some brief discussion to begin with before we hear any
18 testimony, and also to suggest that if there's going to
19 be any value to this hearing, and I'm not sure there
20 will be, but if there's any value to this hearing, it's
21 because the parties will actually join in issue over
22 what it is is being complained about with respect to
23 plaintiffs' experts. There's an element of -- I don't
24 mean this as pejoratively as it may sound -- but cookie
25 cutter nature to the briefing. It doesn't very well

1 focus on the specifics of the testimony that you're
2 hoping to exclude. I am unsympathetic, although I'll
3 certainly hear argument to a position by Weyerhaeuser,
4 that the plaintiffs' experts are not qualified experts.
5 I think their qualifications speak for themselves and
6 they are expert in their respective fields and so they
7 qualify in that sense under Daubert.

8 I also think that there are any number of opinions
9 that they express that would be very hard to challenge
10 under Daubert because they are straightforward
11 propositions. So the real question -- it seems to me
12 the only material issue that Weyerhaeuser can be
13 pointing to, although their briefs are broader, is
14 whether or not these experts can speak to liability for
15 the marginal impact. And again, I don't suggest that it
16 may not have been a real impact or a meaningful impact,
17 particularly for those who are here on behalf of the
18 deceaseds who suffered a serious injury and suffered it
19 for many years. But the only real question is is it --
20 is the testimony probative of causation and of
21 liability. It seems to me that there's two ways in
22 which that's true, either because the opinion goes to
23 proof of substantial exposure from the asbestos or
24 related material or proof of substantial impact. And
25 I'm not sure there's any testimony -- and this maybe is

1 for the plaintiff, the plaintiffs' benefit -- I'm not
2 sure there's any testimony here, expert testimony, and
3 that's all we're dealing with at this stage, of
4 substantial impact. There is testimony of exposure.
5 I'm not even sure there is testimony of substantial
6 exposure. It depends on how the Court ultimately cuts
7 sort of unsettled case law and I would prefer today to
8 not get bogged down in the case law but rather just to
9 focus on what exactly it is Weyerhaeuser wants to strike
10 from each of the witnesses' reports.

11 And by way of preliminary discussion then, I'll
12 turn to Weyerhaeuser whose motion it is to -- you can
13 have 10 to 15 minutes to try to inform the Court as to
14 exactly what it is that you think needs to be excluded,
15 understanding that I am strongly disinclined to
16 wholesale exclude testimony by these experts. I don't
17 know who's going to speak on behalf of Weyerhaeuser.

18 MR. METCALF: Your Honor, one second. Joshua
19 Metcalf for Weyerhaeuser and I'll address the Court's
20 overarching points and then speak specifically to
21 Mr. Parker.

22 As Your Honor noted, this case has been narrowed to
23 a nuisance case and that's really all that's left with
24 respect to Weyerhaeuser is this nuisance.

25 THE COURT: I am aware of that. And again,

1 we're not going to have a summary judgment argument.

2 MR. METCALF: Yes, Your Honor.

3 THE COURT: I want to know what is it
4 specifically that you believe should be struck from each
5 of the expert reports.

6 MR. METCALF: Okay. Our real problem with
7 Mr. Parker's expert reports is that he gives opinions
8 that are too far disconnected from the facts at issue.
9 I'm not going to argue the case law, but just pointing
10 the court to *Textron*, which I think is the most recent
11 pronouncement of the Seventh Circuit on Daubert.

12 THE COURT: You know, we're not going to take
13 all day.

14 MR. METCALF: Yes, Your Honor.

15 THE COURT: And you can assume that I
16 understand the Daubert standards and you can assume that
17 I understand the current unsettled nature of the case
18 law with respect to nuisance claims. I will tell you I
19 remain skeptical as to a private nuisance claim, but it
20 seems like a public nuisance claim may be available
21 under the case law.

22 If what you're telling me is you just think this is
23 not relevant because it's too far afield, as you say,
24 that's not really helpful to me because there's some
25 parts of this surely that you agree is relevant. What

1 would be helpful to me, and I'll say it one last time,
2 is what specific opinions you're looking to strike.

3 MR. METCALF: Your Honor, we're -- I'm trying
4 to find the right way to say this. His -- Mr. Parker's
5 conclusions that every plaintiff was exposed to asbestos
6 in the community air and that exposure was significant,
7 those are too far removed from the studies that are out
8 there, from the testing that was there --

9 THE COURT: Okay. I'm trying to find where is
10 he testifying that -- where in his opinions does he say
11 that every exposure was significant?

12 MR. METCALF: And Your Honor, I'm not -- I'm
13 not talking about every exposure.

14 THE COURT: But that's what you just said.
15 Look it. I'm trying to -- I'm trying to give you a
16 ruling on this motion.

17 MR. METCALF: Right.

18 THE COURT: I can't do it unless -- there are
19 14 opinions expressed and those are all he'll testify to
20 at trial. He'll be limited to his report. So are there
21 any one of those 14 that you can point to that need to
22 be excluded because they don't satisfy 702 or Daubert?
23 Again, my point is not to put you on the spot, although
24 I realize I've done that. My point is I've got these
25 generic motions and I know where you want to get to,

1 which is ultimately at summary judgment to argue that
2 there wasn't adequate proof of liability and
3 particularly of causation and I know where that is. But
4 that's not what you did. You moved on Daubert saying
5 that this person can't testify at all because it doesn't
6 meet the standards of science or relevance to the case.
7 I'm looking at these opinions and they strike me as
8 yeah, they're all relevant, marginally perhaps in many
9 of the cases, but they all appear relevant. So I can't
10 grant you anything under Daubert.

11 MR. METCALF: Your Honor, so there are several
12 important things, like the fact that Mr. Parker had his
13 people do testing of homes in the community to search
14 for asbestos. Those test results all came back
15 negative. They never --

16 THE COURT: Surely you're not going to oppose
17 to him testifying to that.

18 MR. METCALF: No, Your Honor. But for him to
19 then take the leap --

20 THE COURT: What's the leap? What do you think
21 he leapt to? I still haven't -- you haven't pointed to
22 one of the opinions in which he leapt anywhere.

23 MR. METCALF: And Your Honor, let me -- you
24 said you did put us on the spot and I apologize for not
25 being prepared to say 1, 2, 3, these are the exact ones

1 that you want to strike.

2 THE COURT: And that's what I guess I'm really
3 getting at is your motion is just too general. If you
4 had a goal here, you should have arrived with it, which
5 was something more than this person isn't expert or the
6 quality of his research wasn't sufficient generally.
7 I'm sorry, I'm just really having trouble with what the
8 *there* is.

9 MR. METCALF: Your Honor, we believe that the
10 case law requires a connection between his opinions and
11 his research. So when he doesn't have any testing that
12 shows the presence of asbestos in anyone's house, when
13 he doesn't have any modeling to show how asbestos would
14 have gone from this plant into the community, when --

15 THE COURT: Well, that's not entirely true he
16 doesn't have any modeling. But let's leave that aside
17 for the moment. His first opinion is persons handling
18 or distributing -- disturbing, excuse me, raw asbestos
19 and the fire door cores were significantly
20 occupationally exposed to asbestos fibers. You surely
21 can't want to oppose that opinion.

22 MR. METCALF: We don't, Your Honor. We don't.

23 THE COURT: All right. So he's going to
24 testify. In fact, that's an opinion you propound.

25 MR. METCALF: Right. That's not --

1 THE COURT: All right. So his second opinion
2 that persons who simply trans- -- it's transited or
3 temporarily worked, I'm not even sure if that's the
4 proper word, but let's go with transited or temporarily
5 worked in the door areas of the old mill or new core
6 mill were significantly occupationally exposed. Again,
7 no problem; right?

8 MR. METCALF: We do not dispute that, Your
9 Honor.

10 THE COURT: All right. Persons who worked in
11 or transited the fire door areas of the old mill and/or
12 new core person's and clothing were significantly
13 contaminated. Again, no problem. You're not liable for
14 that.

15 MR. METCALF: Right, Your Honor.

16 THE COURT: Okay. 4. People who were simply
17 on the plant site were most likely exposed to asbestos
18 in significant concentrations. No problem.

19 MR. METCALF: Correct, Your Honor.

20 THE COURT: Contaminated workers were allowed
21 to leave the plant which spread asbestos into their
22 vehicles, homes and communities. Certainly you can't
23 disagree with that as a proposition, a scientific
24 proposition, that this expert is qualified to opine
25 that.

1 MR. METCALF: As a general proposition you're
2 right, Your Honor.

3 THE COURT: 6. The community was frequently
4 and routinely contaminated with asbestos as a result of
5 plant emissions and transportations. This contamination
6 was most likely the greatest between World War II and
7 the advent of OSHA regulations in early 1970's. The
8 Court's view, looking at the background that he's
9 provided, is that he is qualified to express that
10 opinion. Doesn't get to your point about the specific
11 concentrations or an individual home, but he can testify
12 to 6 as well; right?

13 MR. METCALF: And Your Honor, our problem with
14 that is his broad brush on the frequently routinely
15 contaminated. He is not offering anything more on that
16 point than just rehashing what plaintiffs have testified
17 to or witnesses have testified to. There's no
18 specialized knowledge that he's offering on this.

19 THE COURT: Well, at least now we're getting
20 down to the rough of it. All right. So your concern is
21 that he is not qualified, based on his background and
22 experience, as well as his knowledge of this particular
23 plant and the movement of individuals from a plant like
24 this to testify generally that a community -- the
25 community in which this plant was located, Marshfield,

1 Michigan --

2 MR. METCALF: Wisconsin, Your Honor. It was a
3 typo in his --

4 THE COURT: I'm sorry, Marshfield, Wisconsin.
5 Oh, that's his typo. That makes more sense since here
6 we are in Wisconsin. Marshfield, Wisconsin, which
7 frequently and routinely contaminated with asbestos or
8 was contaminated with asbestos out of this plant.
9 You're saying that that's not something that he could
10 opine on.

11 MR. METCALF: That's correct, Your Honor.
12 Because he didn't model, because he didn't test, and
13 he's admitted in his deposition that he has not come up
14 with any levels or any predictions of what those would
15 be out in the community.

16 THE COURT: All right. 7. Household members
17 who lived and/or visited houses where workers or others
18 contaminated were exposed to airborne asbestos
19 concentrations in excess of typical ambient
20 concentrations. Is that -- you're objecting to that as
21 well?

22 MR. METCALF: So we have two problems with
23 that, Your Honor, and the reasons that we don't believe
24 he should be able to testify to that is that one, he
25 doesn't know the background levels in Wisconsin. He's

1 admitted that.

2 Number two, when you're talking in the context of
3 nonplaintiff employees, so I would call this sort of the
4 typical household claim as distinguished from the
5 employee bringing it home on their own clothes, he did
6 nothing to evaluate the amount of asbestos that that
7 family member would have been exposed to at work and
8 then brought home on their clothes. And we think that's
9 an important thing. He's got to quantify not just hey,
10 there was asbestos there, it had to come home on the
11 family members' clothes, but he's got to give some kind
12 of estimate, some kind of idea of the amount of asbestos
13 that would have been brought home. And there are
14 several situations where in his deposition he admitted
15 that he didn't know what the asbestos exposure of that
16 family member would have been at work.

17 THE COURT: Okay. I get it.

18 MR. METCALF: Okay.

19 THE COURT: All right. 8. Individuals who
20 drove or were passengers in vehicles contaminated by
21 contaminate workers and others would most likely have
22 been likely exposed to airborne asbestos concentrations
23 in excess of typical ambient concentrations.

24 MR. METCALF: And our --

25 THE COURT: And your main problem essentially

1 is that he doesn't tie that out to these vehicles, the
2 vehicles of the plaintiffs.

3 MR. METCALF: Correct, Your Honor.

4 THE COURT: I should say the deceased plaintiff
5 or the deceaseds. Household members who handle
6 contaminated clothing were most likely and frequently
7 exposed to airborne asbestos concentrations in excess of
8 typical ambient concentrations. Same problem.

9 MR. METCALF: Yes, Your Honor. And the second
10 half as well.

11 THE COURT: Goes to washed contaminated clothes
12 were frequently exposed.

13 MR. METCALF: Yes, Your Honor. You've got to
14 know what the levels were on the clothing to know
15 whether the person washing it is going to be exposed or
16 to what level they would be exposed.

17 THE COURT: All right. Significant plant,
18 house and community asbestos contamination persisted for
19 many years after cessation.

20 MR. METCALF: No documentation to back that up.
21 No testing. In fact, the testing goes the opposite way.

22 THE COURT: 11. You have the same -- what's
23 your -- the same basic objection?

24 MR. METCALF: Yes, Your Honor. He admitted
25 that he didn't do any kind of modeling of what came off

1 of the trucks, how much went in the truck, what kind of
2 exposure that would have been. In previous cases, he
3 has done testing along the roads to the dumps, tested
4 the attic dust, and said oh, I found asbestos in the
5 attic dust and that let's me know that asbestos was
6 coming off these dump trucks. There's none of that in
7 this case.

8 THE COURT: All right. Is warning even an
9 issue anymore? 12?

10 MR. METCALF: No, Your Honor. I don't believe
11 it is.

12 THE COURT: All right. I'll confirm that with
13 the plaintiff. 13.

14 MR. METCALF: I don't think that's at issue
15 anymore either.

16 THE COURT: I wouldn't think so either, but
17 we'll find out. And I think 14 is not an issue anymore.

18 MR. METCALF: Correct.

19 THE COURT: All right. Anything more you wish
20 to add just for the purpose of opening statement?

21 MR. METCALF: No, Your Honor.

22 THE COURT: All right. Then --

23 MR. METCALF: With the one caveat that's the
24 Parker piece of it and I assume you want to take the
25 Parker piece and then take the doctor piece later.

1 THE COURT: Only because it may move this
2 matter along, I'm going to agree with you. And I'll
3 hear from plaintiffs' counsel.

4 MR. FINCH: Your Honor, Dr. Anderson is here
5 and is only available until lunch time, so I'd
6 respectfully request that we take him up.

7 THE COURT: I'm not sure either one of them is
8 going to take that much time. But with that said, let
9 me hear your --

10 MR. FINCH: Sure.

11 THE COURT: Well, let's do it this way then:
12 Let me hear your response, what it is you're complaining
13 about with Dr. Anderson's testimony.

14 MS. ELLIS: Good morning, Your Honor. Tanya
15 Ellis for Weyerhaeuser. There's two components for
16 Dr. Anderson. The first is, as the Court has noted,
17 because these are former employees of this plant, the
18 plaintiffs have to untangle these various exposures such
19 that a jury can parse them out and possibly attribute
20 causation and fault to the nonoccupational pieces.
21 Dr. Abraham has testified that he cannot do that. The
22 plaintiffs were exposed to dust from their own work
23 clothes that they brought home from the plant as a
24 result of their work there. They were exposed to that
25 dust in their car and in their home. And in several of

1 these cases, Your Honor, that's the only component to
2 the household exposure involved. In fact, in three of
3 the cases.

4 Now, there's five cases that involve exposure from
5 the employees' own work clothes as well as alleged
6 exposure from a family member's work clothes.
7 Dr. Anderson testified he cannot separate those two
8 things and that the exposure in the home occurred to
9 whatever combined asbestos was there from the employees'
10 clothes and whatever else came in. And he said that
11 there is no scientific basis for parsing those two
12 things out. So to the point of being able to unravel
13 these exposures in any meaningful way, Dr. Anderson's
14 opinions would not be relevant to that point.

15 The second piece for Dr. Anderson is specific
16 causation. That is the crux of his opinions in these
17 cases is to take Mr. Parker's report and testimony on
18 emissions and dust at the plant and those sorts of
19 things and tie that to the plaintiffs' nonspecific
20 causation opinions. And he did that in each case. And
21 in each case, Dr. Anderson opined that the cumulative
22 exposure that each of these plaintiffs had caused their
23 disease; that their cumulative exposure was comprised of
24 three components of --

25 THE COURT: I get it.

1 MS. ELLIS: -- occupational, household,
2 environmental. And he cannot give a value to, he cannot
3 quantify in any way the nonoccupational pieces.

4 THE COURT: All right.

5 MS. ELLIS: One other point is in light of the
6 fact that he also testified that the occupational
7 exposures in each case were sufficient alone to have
8 caused these diseases.

9 THE COURT: I get it. Anything more?

10 MS. ELLIS: And the last piece I will say is
11 there is a pretty significant methodology piece in the
12 reliance on epidemiological studies that Dr. Anderson is
13 relying on for the entire basis of his opinion and these
14 are studies that relate to other factories and mines in
15 other countries where individuals were identified with
16 no other known exposure other than living in an area
17 near these facilities or mines. They specifically
18 excluded occupational folks. And so to take --

19 THE COURT: But isn't that -- how else would
20 you show marginal causation then if you excluded
21 everything else?

22 MS. ELLIS: Well, these studies might be
23 relevant to a general causation point to show in certain
24 circumstances mesothelioma can develop in a community
25 setting when there are no other known exposures.

1 However, there are no studies demonstrating causation in
2 cases like we have here where the plaintiffs have
3 multiple layers of exposure.

4 THE COURT: But that's just really making your
5 same point over again. What I'm asking is how else
6 through studies of exposures like those claimed here,
7 which do not include these additional exposures, would
8 one prove a particular impact?

9 MS. ELLIS: It would be through a comparison of
10 the exposures that those individuals in the studies
11 experienced to the individuals in our cases. Compare
12 the facilities there to our facility. And Dr. Anderson
13 expressly testified he made no such comparison. I think
14 the quote is the differences between the facilities
15 didn't matter to me. He simply looked at those studies
16 for incidence of disease in the community and took that
17 and put it on top of Marshfield without connecting the
18 two.

19 THE COURT: And I take it that Mr. Parker
20 doesn't do that either.

21 MS. ELLIS: No, Your Honor.

22 THE COURT: All right. Anything further?

23 MS. ELLIS: No. Thank you.

24 THE COURT: Very good. Then I will hear from
25 you, Mr. Finch. I know you've been eager to speak and I

1 would like to address both Parker and Anderson, if we
2 could.

3 MR. FINCH: Yes.

4 THE COURT: I'll let you decide in what order.

5 MR. FINCH: What this --

6 THE COURT: Oh. We're going high tech right
7 away.

8 MR. FINCH: No doubt about it. At the end of
9 the day, Your Honor, this case involves an overlay of
10 Wisconsin substantive causation law and Daubert.

11 THE COURT: I really don't care to be lectured
12 on Daubert or on causation law. I spend a fair amount
13 of time with those issues. I would really like to get
14 to the heart of the motion before the Court.

15 MR. FINCH: The heart of the testimony is they
16 keep saying quantify, quantify, quantify. There is no
17 requirement in medicine, there is no requirement --

18 THE COURT: Well, that's not before me. What's
19 before me is whether or not there is --

20 MR. FINCH: A reliable --

21 THE COURT: -- a basis, a scientific basis for
22 your two experts -- and now we're just talking about the
23 two, we'll hold off on the third, Mr. Abraham, and see
24 if we need to hear from him. We're talking about those
25 two and whether or not they had a basis to express their

1 opinions. The argument is that as to opinion 6, all
2 Mr. Parker -- and I'll start with him since you haven't
3 started with one or the other -- all he is doing is
4 repeating factual testimony. He's not actually opining
5 as an expert at all, and if he is, has no basis to do
6 so.

7 MR. FINCH: Okay. The basis that he has to
8 give an opinion about what a fact witness testifies to,
9 a fact witness testifies --

10 THE COURT: I know what a fact witness
11 testifies to. What's his basis --

12 MR. FINCH: His basis is --

13 THE COURT: -- for opining that the community
14 was frequently and routinely contaminated with asbestos
15 as a result of plant emissions and transportation of
16 asbestos out of this plant? That is to say, the -- I
17 guess I don't know how you -- do you refer to it as the
18 Roddis Plywood plant? The Weyerhaeuser plant? What's
19 your --

20 MR. FINCH: Weyerhaeuser plant.

21 THE COURT: I figured you'd want to go with
22 that. Better for the jury. So out of the Weyerhaeuser
23 plant.

24 MR. FINCH: Out of the Weyerhaeuser -- his
25 basis is what he knows about how asbestos fiber moves

1 through the environment from his 40 years of experience
2 in being an industrial hygienist who has studied
3 asbestos --

4 THE COURT: The complaint is that yes, he knows
5 those things and he can testify generally that this is
6 how it works generally. But he can't say out of the
7 plant because he does not know how it spread from this
8 particular plant. He can testify that generally this is
9 how a plant like this disseminates or contaminates a
10 community with asbestos, but he can't speak to what this
11 particular plant did because he didn't do any studies of
12 this particular plant.

13 MR. FINCH: That's almost always the case, Your
14 Honor. But here we have actually a --

15 THE COURT: Okay. So you're fine with him
16 being limited to general testimony about how a plant of
17 this kind generally contaminates a community. That's as
18 far as he's going to respond.

19 MR. FINCH: Well, he has specific facts for
20 each person as well.

21 THE COURT: That's what I'm asking. Well,
22 that's not what -- again, I want to focus both sides.
23 I'm ruling on opinions here. I'm not ruling on the
24 overarching testimony. Whether or not he can express
25 certain opinions, 6 -- and I'd really encourage you to

1 look at 6 -- does not say anything about the individual
2 plaintiffs. It's a general statement. And as I
3 understand it, the complaint is that he can't opine as
4 to what happened with respect to this community and this
5 plant based on a general understanding of what happens
6 in communities generally.

7 MR. FINCH: But he can because he has some
8 historical measurements of asbestos fiber concentrations
9 out in the world in the 70's that they did and he knows
10 based on that that that's a significant level of
11 asbestos exposure in the air from memorandum and testing
12 done. That's a point test which --

13 THE COURT: I'm with you and I follow that.

14 MR. FINCH: -- rarely occurs. He did a
15 separate report for each plaintiff where he talks
16 about --

17 THE COURT: You keep trying to get to each
18 plaintiff and we're not there yet.

19 MR. FINCH: Okay. Fine. On the general thing,
20 he has historical testing. He has his knowledge of
21 asbestos fiber drift. He has his dust dispersion
22 studies that he's done. He knows that you have these
23 historical measurements. He knows that people are
24 talking about dust, moving from an asbestos -- that was
25 used in an asbestos facility out in dump trucks

1 throughout the community.

2 An industrial hygienist --

3 THE COURT: What you're saying is he can at
4 least rely on those other statements in support of this
5 opinion, on top of the actual investigation or the
6 actual data that was available from this plant.

7 MR. FINCH: Correct.

8 THE COURT: Anything else?

9 MR. FINCH: And he can also say that this
10 situation is not unique. This kind of thing happens,
11 and he can rely on the other industrial hygiene and
12 medical literature out there in the world that shows
13 when you have a factory that's a point source of
14 emissions, you see a concentric ring of disease around
15 it, and some of those, they have fiber measurements and
16 some of them doesn't. As an industrial hygienist, if
17 he's out there in the real world outside of the court,
18 Daubert means, if anything else, does the expert apply
19 the same standards in the courtroom as outside. In the
20 real world he sees an asbestos factory using tons of
21 asbestos to make these fire doors. They put it in
22 trucks and they ship it down the street and dump it.
23 Guys go home with dust all over their clothes. Some of
24 that dust is asbestos dust.

25 In the real world, an industrial hygienist sees

1 that and says that's a dangerous level of exposure. I
2 know that if there's visible dust that has any kind of
3 asbestos component to it, that's going to be orders of
4 magnitude above ambient. Their comment about ambient,
5 you don't know Wisconsin ambient, that's irrelevant to
6 this. The ambient standards is, if you get back to
7 epidemiology, there's really no truly purely unexposed
8 asbestos population in the world. But if you use what's
9 the next best thing to it, which is nationwide averages
10 of ambient rural air, from the National Academy of
11 Sciences which put out a big thick book in 1984 which
12 looked at asbestos fiber and nonoccupational disease
13 risk, that's what Mr. Parker relies on for his
14 background ambient. He knows, based on his training in
15 industrial hygiene, he knows based on the historical
16 measurements that they did, he knows based on the
17 asbestos fiber drift studies that when these things
18 happen, you're going to have an enormous exposure
19 compared to background ambient air. That is what
20 Mr. Parker can testify to, not only generally, but as to
21 if any particular witness comes in and says my dad was
22 dusty when he came in the door or we played on the
23 playground and that was dusty, he knows based on
24 historical measurements back in the day, based on how
25 the asbestos behaves in environments in other plants

1 like the one in Egypt that he talked about, like from
2 the very first paper in 1960, the Wagner paper, where a
3 lot of the disease arose outside of the mine, people
4 that had no connection of coming to the mine, he knowing
5 all that that this is a dangerous exposure that
6 industrial hygienists would try to minimize it or stop
7 it. That's the testimony from the industrial hygienist
8 perspective.

9 THE COURT: All right.

10 MR. FINCH: As it had --

11 THE COURT: You wanted to talk about the
12 specific plaintiffs.

13 MR. FINCH: Do I want to talk about the
14 specific --

15 THE COURT: You said he also relied on --

16 MR. FINCH: He also relied --

17 THE COURT: -- or I should say opines with
18 respect to each plaintiff.

19 MR. FINCH: He will opine through each
20 plaintiff, based on either hypotheticals based on their
21 testimony or their depositions or if they testify live,
22 he will be able to say okay, that situation where
23 someone talks about dust coming in the home every day,
24 once the dust gets in the home, once the asbestos dust
25 is in the home, I know based on my years of training

1 that it never leaves unless you have an asbestos
2 abatement company come in. At least it doesn't leave
3 for a significant period of time. Eventually yes, it
4 goes down to vanishingly small levels. So if you test
5 for it 40 years later, you may not find it. But in the
6 60's and 70's --

7 THE COURT: Something you didn't do regardless;
8 right? Mr. Parker didn't do that regardless. He didn't
9 test for it 40 years later.

10 MR. FINCH: Correct. So where the issue boils
11 down to is okay, so you have that kind of qualitative
12 industrial hygiene testimony with lay witness testimony.
13 Then you get to the doctor testimony. At the end of the
14 day, it's the doctor testimony on which the case rises
15 or falls because --

16 THE COURT: Well, before we move to
17 Dr. Anderson, let's just dwell a moment with respect to
18 Parker. You're agreeing that 12 through 14 of his
19 opinions are no longer relevant in light of the Court's
20 rulings?

21 MR. FINCH: Let me confer with Mr. --

22 THE COURT: Okay. Well, why don't you do that
23 and you can advise me later. I think that's all I have
24 with respect to Parker. Now, if you'd like to go on to
25 Dr. Anderson, I would appreciate hearing.

1 MR. FINCH: Yes. Okay. So now we're going
2 back to the high tech chart that I drew on the board.
3 In any, almost any asbestos case, this issue of
4 disentanglement, there's no requirement that you
5 disentangle it. The question is if you've got a
6 situation where --

7 THE COURT: Let's assume there's a requirement
8 that it be a substantial --

9 MR. FINCH: Correct. I agree with you on that.
10 So --

11 THE COURT: Well, good. So we're moving along
12 then.

13 MR. FINCH: Your Honor -- I apologize, Your
14 Honor.

15 THE COURT: No, no. Don't apologize. I mean
16 I --

17 MR. FINCH: I didn't mean to be flip.

18 THE COURT: On the contrary, your response was
19 fine. I didn't mean to be flip either. Like I said, I
20 meant to be humorous. I want to just bring us to a head
21 as to where the real disagreement is.

22 MR. FINCH: Okay.

23 THE COURT: And since we can assume for this
24 purpose that the real nub of this case, as you said, is
25 going to be medical testimony with respect to a

1 substantial impact or exposure --

2 MR. FINCH: Substantial --

3 THE COURT: I think it done proven -- as I read
4 the case law, it probably could be proven either way;
5 that is, if you had evidence that this individual
6 plaintiff was substantially exposed, that might get you
7 there if you also have proof that substantial exposure
8 has a substantial impact. Or you might be able to prove
9 simply that there is evidence of substantial impact,
10 although I'm not quite sure how you get there without
11 substantial exposure.

12 MR. FINCH: Okay. There is medical literature
13 in epidemiological literature that --

14 THE COURT: Well, but fortunately we're not
15 dealing with what there is generally. We're talking
16 about Dr. Anderson's qualifications and --

17 MR. FINCH: Dr. --

18 THE COURT: -- facts that he relied upon in
19 order to opine that -- and here I want to be clear. I
20 don't read him to opine with respect to any individual
21 plaintiff that they -- that the nonoccupational
22 exposure, and here I include whatever the workers may
23 have brought home from the plant, I don't read him to
24 opine that the nonoccupational exposures were a
25 substantial -- had a substantial impact on the

1 plaintiffs' condition.

2 MR. FINCH: I think he is offering that
3 opinion.

4 THE COURT: Well, where in his report does he
5 say that?

6 MR. FINCH: In his report he talks about the
7 various kinds of subcomponent exposures that can cause
8 mesothelioma.

9 THE COURT: Well, this isn't rocket science.
10 There's five opinions. They're numbered. That's what
11 Rule 26 is all about. Which of those opinions does he
12 opine that this nonoccupational exposure was a
13 substantial or had a substantial impact on his disease?

14 MR. FINCH: It's in the -- it's -- in the case
15 -- it's in the case specific reports.

16 THE COURT: Perfect. Let's go to those.

17 MR. FINCH: Okay. So, for example, if you take
18 the case specific report for Milton Boyer.

19 THE COURT: I don't usually use this courtroom.
20 Hang on a second. Which of them are you pointing me to?

21 MR. FINCH: Milton Boyer. This is -- I can
22 hand up a copy of it.

23 THE COURT: That's all right. I think I have
24 it here. Docket number?

25 MR. FINCH: If you just give me the docket

1 number, we'll be in business. It's document 242.

2 THE COURT: Thank you.

3 MR. FINCH: Thank you, Counsel.

4 THE COURT: If you have an extra copy, I'll
5 take it too, but I don't want to delay things if I'm
6 going to hold up progress.

7 MR. FINCH: May I approach?

8 THE COURT: Please.

9 MR. FINCH: This doesn't have the docket number
10 on it.

11 THE COURT: That's fine. I have it in front of
12 me as well electronically. And the specific opinion is?

13 MR. FINCH: Number 4. The occupational,
14 household and community exposures Mr. Boyer experienced
15 from his work involving asbestos-containing core
16 materials at Roddis/Weyerhaeuser plant, emissions into
17 the community air from the use of those materials as a
18 result of plant operations, and transfer of fibers from
19 the plant which caused household exposures, each
20 substantially contributed to his cumulative lifetime
21 asbestos exposure which caused --

22 THE COURT: So the whole key is the language
23 each --

24 MR. FINCH: Substantially contributed --

25 THE COURT: -- substantially contributed to his

1 lifetime asbestos exposure.

2 MR. FINCH: Which caused his malignant
3 mesothelioma.

4 THE COURT: All right.

5 MR. FINCH: And so the next question -- that's
6 the opinion. What's the scientific basis for that? The
7 scientific basis for that is that a day to a few days of
8 occupational level exposure, whether that's from working
9 in a plant, working in the home, having household
10 asbestos dust in the home or being in a community, that
11 tiny fractional amount of asbestos exposure by itself
12 can cause mesothelioma. If that by itself can cause --
13 there is medical literature that he cites in his general
14 report that he can talk about here today. That level of
15 exposure can cause mesothelioma.

16 There is medical literature, both epidemiologically
17 and case series that shows that when asbestos dust gets
18 into the house, it can cause disease, including
19 mesothelioma. It can cause even asbestosis, which is a
20 disease that requires a substantially elevated level of
21 asbestos fibers. So that kind of exposure -- if a
22 patient presented to him and all they had was a
23 household exposure, he would say that's an
24 asbestos-related mesothelioma.

25 If a patient presented to him and all they had was

1 exposure from living a half mile from the Weyerhaeuser
2 plant and when you've got these historical measurements,
3 if there was elevated asbestos in the community, a
4 doctor in the real world applying the Helsinki criteria
5 which is aimed at doctors in the real world would say
6 that's an asbestos-related mesothelioma. If you had
7 somebody that worked just in the plant, didn't have the
8 other two, that would be an asbestos-related
9 mesothelioma. So each of those can cause mesothelioma
10 by themselves.

11 Each of them can be a substantial contributing
12 factor because if you take --

13 THE COURT: I get it.

14 MR. FINCH: If you take --

15 THE COURT: Anything more that you wish to add
16 generally before we go to testimony?

17 MR. FINCH: No, sir.

18 THE COURT: All right. Very good. I'm going
19 to assume that each of the experts here will testify
20 consistent with their reports and so I am going to ask
21 -- and I guess it should be Dr. Anderson would be
22 plaintiffs' request because he has the one who has the
23 tightest schedule -- I would ask him to come forward and
24 be sworn. Thank you. Dr. Anderson, you can actually
25 step around here.

1 MR. FINCH: And Your Honor, I have prepared a
2 PowerPoint that might make this go a lot faster.

3 THE COURT: Well, you're wrong because we will
4 assume that he'll testify consistent to his report. So
5 we will not be starting with you. We'll be starting
6 with the movant who will cross-examine and then you can
7 qualify as you wish. But we're not going through a
8 dog-and-pony show this morning on a Daubert motion. And
9 you may be seated. Thank you very much, Counsel.

10 And you may be sworn in.

11 **HENRY ANDERSON, PLAINTIFFS' WITNESS, SWORN,**

12 THE COURT: Very good. You may be seated,
13 Doctor. And I assume that you do stand behind the
14 formal reports that have been filed in this case --

15 THE WITNESS: Yes.

16 THE COURT: -- that you prepared?

17 THE WITNESS: Yes. And there was an expansion
18 on that during the depositions. I was asked, so that's
19 additional information that augments the reports.

20 THE COURT: It does. And I'll consider that
21 and I'm confident that your counsel will expand on that
22 as well. At this point, I would like you to focus
23 specifically on the questions that are being asked by
24 defense counsel and answer those questions. If you can
25 answer them yes or no, you should. If you need to

1 expand on them in order to be accurate, I'll allow you
2 to do that. But I want you to be fair to the
3 questioner, assuming that counsel for the plaintiffs
4 will have an opportunity to allow you to expand or
5 qualify if necessary. Do you understand?

6 THE WITNESS: I understand, yes.

7 THE COURT: All right. You may proceed,
8 Counsel. Is it Ms. Ellis who will be cross-examining?

9 MS. ELLIS: Yes, Your Honor. One moment,
10 please. Thank you.

11 CROSS-EXAMINATION

12 BY MS. ELLIS:

13 Q Good morning, Dr. Anderson. How are you?

14 A Okay.

15 Q Good. You've issued specific causation opinions in
16 each of the eight cases we're here to talk about today;
17 correct?

18 A Yes.

19 Q Okay. And in each of the cases, you've opined that
20 the plaintiffs' cumulative exposure to asbestos caused
21 the disease; correct?

22 A Yes.

23 Q And as a part of the cumulative exposure, you
24 opined that occupational exposure contributed; correct?

25 A Yes.

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1 Q The household exposure contributed; correct?

2 A Yes.

3 Q And environmental exposure contaminated --
4 contributed; correct?

5 A Yes.

6 Q And that's in each of the cases; right?

7 A Yes.

8 Q And that opinion is the same in each of the cases
9 even though some of our plaintiffs never lived in
10 Marshfield; correct?

11 A Yes.

12 Q Okay. And that opinion is the same even though
13 some of our plaintiffs never lived with another worker
14 who worked at the plant; correct?

15 A I would have to go through the specifics of it.
16 The same in the community, they all pass through the
17 community and there was some community exposure. But I
18 focused mostly on those that -- on the residences within
19 1.2 miles of the factory.

20 THE COURT: Said another way, you didn't assume
21 that one of the plaintiffs lived with another co-worker.

22 THE WITNESS: No, I did not assume that. I
23 only used the information I had.

24 THE COURT: Right. You didn't rely on that in
25 reaching your opinion.

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1 THE WITNESS: No.

2 THE COURT: Next question.

3 BY MS. ELLIS:

4 Q Okay. And so -- and you do agree that there were
5 several plaintiffs who did not live within the radius
6 that you identified as the radius --

7 THE COURT: That's been asked and answered,
8 Counsel.

9 MS. ELLIS: Okay.

10 BY MS. ELLIS:

11 Q And now in reaching your community causation
12 opinions, you didn't go to Marshfield; right?

13 A I've been to Marshfield many times, but I didn't go
14 there.

15 Q To conduct your opinions.

16 A Right. I looked at the maps and I looked at where
17 the houses were and we measured the distances. So we
18 looked at a lot of that kind of thing and information
19 that we had on where the residences were during the
20 period that the factory was operational.

21 THE COURT: And you've answered the question.
22 Thank you.

23 THE WITNESS: Thank you. Sorry.

24 BY MS. ELLIS:

25 Q And you testified at your deposition that in order
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1 to reach a community-causation opinion, you looked at a
2 couple of different factors; right? You considered the
3 residence of the plaintiff; right?

4 A Yes.

5 Q You considered evidence of release of asbestos from
6 the plant; correct?

7 A Yes.

8 Q Okay. And you considered the complaints in the
9 community of dust; right?

10 A Yes.

11 Q And you looked at epidemiological literature;
12 correct?

13 A Yes.

14 Q But you issued community-causation opinions in
15 these cases without any of that information; correct?

16 A I don't --

17 THE COURT: In other words, when you issued
18 your original opinion you had, you didn't have any of
19 that information.

20 THE WITNESS: I did have that information.

21 THE COURT: Next question.

22 MS. ELLIS: Okay. Well, Your Honor, if I may,
23 I'd like to present --

24 THE COURT: Of course you can.

25 MS. ELLIS: Thank you.

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1 BY MS. ELLIS

2 Q Your first report that you issued in these cases
3 was issued in the Jacobs case in 2013; correct?

4 A I don't recall.

5 Q Okay. I'm going to get that out and we'll get you
6 a copy of it and I'd like to put it up, if I may.

7 THE COURT: Why don't we assume for the moment
8 that that's when it was issued unless plaintiff
9 disagrees with that. I'll ask the witness to assume
10 that the first of your reports in this case was for
11 Jacobs and that it was in 2013. Does that sound wrong
12 to you? You don't know.

13 THE WITNESS: Jacobs, I'm not sure that's one
14 of the cases here.

15 MS. ELLIS: Got it.

16 BY MS. ELLIS:

17 Q Okay. It's Ms. Treutel. So the case name is
18 Jacobs and --

19 A I didn't issue a report on a Jacobs is what I'm
20 saying.

21 THE COURT: I'm with you. So why don't you
22 rephrase --

23 MS. ELLIS: It's Treutel.

24 THE COURT: Why don't you rephrase then,
25 Counsel.

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1 MS. ELLIS: Okay.

2 BY MS. ELLIS:

3 Q Your report regarding Mrs. Rita Treutel was issued
4 in June of 2013 and in the report you concluded that
5 Mrs. Treutel's mesothelioma or cumulative exposure
6 caused the disease and that was comprised of
7 occupational, community and household exposure.

8 The information that you reviewed in reaching that
9 report, however, contained no information about the
10 plant. Do you recall us talking about that at your
11 deposition?

12 A I didn't summarize that in my medical report on did
13 the person have mesothelioma and was it related to
14 asbestos exposure.

15 Q This is the exposure summary that you looked at to
16 reach your opinions in this Treutel case. And I'm going
17 to bring you a copy of your report, Dr. Anderson.

18 MR. FINCH: Object to form. This is his
19 initial report. He did a subsequent report.

20 THE COURT: I'll overrule that. You can
21 approach.

22 BY MS. ELLIS:

23 Q I'm going to give you a copy of the report just so
24 we're all on the same page. And what I have on the
25 screen is the exposure summary that you were provided

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1 with the factual information to consider to render your
2 opinions; correct?

3 A Yes.

4 Q Okay. And if we look -- we look in your report, I
5 think it either says in here or we looked at your
6 invoices that you spent an hour-and-a-half looking at
7 the materials and drafting your report; correct?

8 A Yes.

9 Q Okay. And you concluded here -- we can flip to
10 your conclusions -- that Mrs. Treutel's mesothelioma was
11 caused by occupational, household and environment;
12 correct?

13 A Yes.

14 Q Okay.

15 A Occupational bystander and environmental exposure.

16 Q Okay. And if we look at the material that you were
17 provided and reviewed in connection with this report,
18 there is no information about releases of asbestos from
19 the plant; correct?

20 A No.

21 Q Okay. And there is no information about complaints
22 in the community about dust; correct?

23 A Not in my report, no.

24 Q Okay. And not in the information that you
25 considered in coming up with your reports; right?

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1 A No.

2 Q Okay. So you issued a community-causation opinion
3 that someone was exposed to asbestos in Marshfield and
4 it contributed to causing their mesothelioma without any
5 information on whether or not this plant actually put
6 asbestos into the air; right?

7 A My assumption from the exposure history I had and
8 in talking with the attorneys was that there were these
9 releases. I didn't have those documents as that was
10 what Mr. Parker was working with.

11 Q Okay. And you testified in your deposition that
12 all you needed to know was that the plant was using
13 asbestos in order to reach that opinion; right?

14 A That asbestos caused the mesothelioma and that it
15 was related to the plant, yeah, that's all I needed to
16 know was were they using it and where the people lived
17 and what was going on.

18 Q Okay. Well, that brings me to my second point
19 here. If you look at the information you were provided
20 about Mrs. Treutel, you are not provided with a single
21 address for her, were you?

22 A I didn't mention their addresses that were here. I
23 can't tell you back from two years ago what information
24 and discussion with the attorneys, what they told me.

25 Q Well, all we have are the materials that were
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1 provided to us that you relied on in coming up with your
2 reports, which is this exposure summary which you based
3 your report on. And you'll agree with me that there's
4 no information in there about where Mrs. Treutel lived;
5 correct?

6 A Right.

7 Q And there's no information in your report about
8 where Mrs. Treutel lived; correct?

9 A No.

10 Q Okay. So you didn't have any information about the
11 plant emitting asbestos and you didn't know where
12 Mrs. Treutel lived; right?

13 A That's correct.

14 Q But yet you issued a community-causation opinion in
15 the case; right?

16 THE COURT: I think it's been asked and
17 answered.

18 THE WITNESS: I have here a summary of the --

19 THE COURT: You don't need to respond.

20 THE WITNESS: Okay.

21 THE COURT: It's cumulative and we should move
22 on.

23 BY MS. ELLIS:

24 Q And Dr. Anderson, you've actually published an
25 article on how to go about determining whether or not an
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1 environmental contaminant can cause a disease; right?

2 A No, I don't believe so.

3 Q Do you recall the CDC article that we discussed at
4 your deposition?

5 A That was on responding to public concerns and
6 requests about clustering of disease.

7 Q Right. It is an article --

8 A Which isn't a how to go about investigating an
9 individual claim here. You have to have --

10 THE COURT: All right. I've got it. You've
11 answered. And you should ask your next question,
12 Counsel.

13 BY MS. ELLIS:

14 Q In your report, Dr. Anderson, you concluded that
15 this group of cases in Marshfield was indeed a cancer
16 cluster; right?

17 A Well, any time there's more than two it's a
18 cluster.

19 Q Okay. So you refer to this as a cancer cluster and
20 you've written an article on how to evaluate cancer
21 clusters; right?

22 A Publicly requested community concerns about cancer.
23 This is not a cancer cluster relevant to that article.

24 Q Okay.

25 THE COURT: So the article wasn't about that
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1 specifically, and you should ask your next question,
2 Counsel. Perhaps getting over the preliminary of why he
3 wrote the article, you have some point to make with
4 respect to it.

5 MS. ELLIS: Yes, Your Honor. And I will note
6 that the article also says that --

7 THE COURT: You don't need to note anything.
8 You should be asking questions of this witness.

9 MS. ELLIS: Okay. Yes, Your Honor.

10 BY MS. ELLIS:

11 Q The article you wrote says that this article should
12 be used by epidemiologists anywhere who are
13 investigating cancer clusters; right?

14 A Who request community cancer cluster concerns.

15 Q If we look right here, "In addition, these
16 guidelines might be helpful to a wider community of
17 responders and epidemiologists who were concerned with
18 such inquiries"; right?

19 A Yes.

20 Q Okay. And this article goes about a list of steps
21 to determine whether or not a cancer cluster can be
22 linked to an environmental contaminant; right?

23 A Yes.

24 Q And in the article you say that it is very rare
25 that you are able to link an environmental exposure to a

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1 cancer cluster; right?

2 A The kind of requests that come in from the public
3 about there's a lot of cancer in my -- on my block or in
4 my small community, very generic, those do not find
5 causes in the most cases. This -- these cases are
6 sentinel cases. It depends on what the cancer is as you
7 read this.

8 Q Yeah, because the article --

9 A So very obviously if there's a mesothelioma, 85 to
10 90 percent of those you'll find asbestos, so that isn't
11 the kind of investigation here. This is -- this paper
12 was to address communities calling and say three kids in
13 my school have cancer.

14 THE COURT: And Dr. Anderson, I really would
15 like you to focus on the question that's asked so we can
16 get through this.

17 THE WITNESS: Okay. I'm sorry.

18 THE COURT: Thank you. You may ask your next
19 question, Counsel.

20 BY MS. ELLIS:

21 Q And the article says that even when you think you
22 have a signature disease of a certain toxin or a certain
23 exposure, even in those cases you have to follow these
24 steps because it could just be a coincidence; right?

25 A It doesn't say you must follow these steps.

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1 Q Okay. Well, it recommends that these steps be
2 followed; right?

3 A Recommends this is an approach, this is a model or
4 a method to approach these kind of generic requests.

5 Q Okay. And you yourself have actually evaluated
6 whether or not vermiculite factories in Wisconsin, which
7 also involve asbestos; right?

8 A Yes.

9 Q Whether or not those vermiculite factories impacted
10 the communities around them; right?

11 A Yes.

12 Q And when you undertook that investigation, you went
13 about the steps that were outlined in your cancer
14 cluster article; right?

15 A We followed -- I mean we followed the approach that
16 the federal government that contracted for the work told
17 us to do.

18 Q And that was to go out and look at the incidence of
19 disease in those communities; right?

20 A Yes.

21 Q And then compare that to an unexposed population;
22 right?

23 A There wasn't any unexposed, but yes, it was to
24 compare that to the state averages.

25 Q Right. And see if are there any increases in these
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1 certain diseases that can be caused by asbestos that
2 will point us in the direction of related to this
3 vermiculite plant; right?

4 A Yes.

5 Q And you followed those steps, right, with your
6 vermiculite study?

7 A Yes.

8 Q And you didn't do any of those things in these
9 cases, did you?

10 A Not in these cases. These were individual case
11 reports, not community --

12 THE COURT: I get it, Doctor. You just need to
13 say yes or no and you answered it yes. You didn't do
14 those things; right?

15 THE WITNESS: No. Right.

16 THE COURT: Thank you.

17 BY MS. ELLIS:

18 Q And you're not aware of a single person in
19 Marshfield -- at the time you issued these
20 community-exposure opinions, you had no information on a
21 person in Marshfield who has mesothelioma simply from
22 living in the community; right?

23 A Yes.

24 Q That's correct?

25 A That's correct.

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1 Q Okay. And the epidemiological studies that you
2 rely on that we discussed at length at your deposition,
3 those all hinge on -- they're based on the fact that in
4 those communities there are mesos, people with
5 mesothelioma with no other exposure than living next to
6 those point sources; correct?

7 A Yes.

8 Q Okay. And you acknowledged you didn't compare the
9 factories and mines in those studies to Marshfield;
10 correct?

11 A They had mesotheliomas in the plants is where it
12 started from and they looked for other mesotheliomas and
13 they have registries different that we do not have a
14 registry.

15 Q So to answer my question, you did not compare those
16 facilities to the facility in Marshfield; correct?

17 A Just the impact of those facilities similar to
18 Marshfield.

19 Q You didn't make any comparison of the impact on
20 those communities and the impact that the Marshfield
21 plant has on Marshfield though, did you?

22 A I didn't do an impact on Marshfield.

23 Q Right.

24 A The broader Marshfield.

25 Q Right. So there was no comparison between those
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1 studies and Marshfield.

2 THE COURT: I think we've established that.
3 But let me ask a related question: Wouldn't it have
4 been helpful to you to have done such an examination in
5 order to express the opinion that this additional
6 exposure from nonoccupation or I should -- let me
7 rephrase that. That the nonoccupational exposures were
8 a substantial factor? Wouldn't it have been helpful to
9 have looked at the population in the Marshfield area as
10 compared to the state average?

11 THE WITNESS: That's not a yes or no because --

12 THE COURT: I'm not asking it --

13 THE WITNESS: No. But the samples -- the size
14 of the Marshfield population isn't sufficient to give
15 you power to find anything. The general issue is these
16 types of circumstances around the world have been found
17 to cause mesothelioma between four and eight times
18 higher than any comparison population.

19 THE COURT: Which means that a population the
20 size of Marshfield you would have a chance of what?
21 What would be the odds?

22 THE WITNESS: Well, the background rate of
23 mesothelioma is about one in a million.

24 THE COURT: Okay.

25 THE WITNESS: So you've got 18,000 people --
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1 THE COURT: So it would be four or five -- hang
2 on. So it would be four or five in a million. And so
3 in a population of 35,000, it would be some fraction of
4 one.

5 THE WITNESS: One, yeah. It wouldn't be --
6 yeah. You would have to have a very high rate in order
7 to find a single one, again, within a mile-and-a-half of
8 the plant. All 18,000 people don't live there.

9 THE COURT: So it wouldn't prove anything like
10 we have.

11 THE WITNESS: It wouldn't prove anything one
12 way or the other.

13 THE COURT: All right. I understand. Next
14 question.

15 BY MS. ELLIS:

16 Q And to the point that Your Honor was addressing
17 with Dr. Anderson, in your vermiculite study though,
18 Dr. Anderson, you were looking at communities in
19 Marshfield; right? Excuse me, communities in Wisconsin;
20 right?

21 A It was Milwaukee, Racine, Kenosha.

22 Q Right. And those communities are larger than
23 Marshfield; right?

24 A Yes.

25 Q But not terribly larger; right?

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1 THE COURT: Well, yes, they are terribly
2 larger.

3 MS. ELLIS: Well, okay. Fair enough.

4 BY MS. ELLIS:

5 Q There is a database in Wisconsin that provides
6 information on the incidence of disease in the state and
7 in certain counties; correct?

8 A Yes.

9 Q Okay. And it also provides information on the
10 incidence of mesothelioma in the state; right?

11 A Yes.

12 Q And in certain counties; right?

13 A Yes.

14 Q It provides information on the incidence of
15 mesothelioma in Wood County and Marathon County; right?

16 A Yes.

17 Q The two counties that are involved in these cases;
18 right?

19 A Yes.

20 Q You didn't even look at that data before you issued
21 these opinions, did you?

22 A I was aware of the data by county. But again, that
23 data doesn't sort it out by the type of exposure.

24 Q Right. But the point being to look and see how
25 does the information on mesothelioma in these counties

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1 compare to the state. You didn't consider that data,
2 did you?

3 A I didn't consider that data to be particularly
4 relevant. These counties are higher than the state
5 average.

6 Q You testified in your deposition, Dr. Anderson,
7 that you did not look at that data before issuing these
8 opinions; right?

9 A That data didn't -- wasn't particularly or was not
10 relevant to --

11 THE COURT: So the answer is you didn't look at
12 it.

13 THE WITNESS: I didn't utilize it. I certainly
14 was aware --

15 THE COURT: You didn't rely on it.

16 THE WITNESS: I didn't rely on it as a basis
17 for my opinion.

18 THE COURT: Next question, Counsel.

19 MS. ELLIS: Okay.

20 THE WITNESS: Thank you, I'm sorry.

21 BY MS. ELLIS:

22 Q So one of the studies that you relied on was a
23 meta-analysis called *Bourdés*; right?

24 A Yes.

25 Q You're familiar with the study. And Bourdés looked
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1 at six different studies that evaluated risk for
2 mesothelioma in communities; right?

3 A Six or eight I think it was, yeah.

4 Q Okay. And I just want to put this up for you to
5 take a look at. Okay. And this study that you rely on,
6 it states "Comparison of RRs" -- which would be relative
7 risks; right -- "between different study populations is
8 feasible if the populations experienced similar levels
9 of exposure, as is probably the case in our
10 meta-analysis"; right?

11 A Right.

12 Q And you agree with that statement; right?

13 A Yes.

14 Q You didn't make any comparison in the studies that
15 you looked at, the exposures that happened there with
16 the exposures that happened in Marshfield; right?

17 A Again, this is not measurement of exposure, it's a
18 circumstance of exposure. These six studies were done
19 with different facilities, different types of factories,
20 and different communities, and so it's the circumstance
21 that's similar to Marshfield. You have a manufacturing
22 facility. These were manufacturing facilities.

23 Q And --

24 A And that puts them in a class of communities, class
25 of exposure that's similar to make a comparison to

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1 Marshfield.

2 Q And --

3 THE COURT: But you didn't make any specific
4 comparison as to the level of exposures that existed in
5 these meta-data studies and the level of exposure that
6 these --

7 THE WITNESS: Most of these studies didn't --

8 THE COURT: Let me finish the question.

9 THE WITNESS: Sorry.

10 THE COURT: That you didn't make any comparison
11 between the level of exposure in these meta studies and
12 the level of exposure that occurred in Marshfield.

13 THE WITNESS: Neither of them had measurements.

14 THE COURT: So the answer is you did not.

15 THE WITNESS: Yeah, I did not. No.

16 THE COURT: All right. Next question.

17 MS. ELLIS: Okay.

18 BY MS. ELLIS:

19 Q I'm going to put up a chart here and I've keyed in
20 a couple of pieces of information from some of the
21 studies that you relied on and compared them to
22 Marshfield and the information that you are opining on
23 Marshfield. And so we're -- so we have Marshfield and
24 in our case is right, you're not aware of any what I'm
25 calling community mesos, right, where the only known

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1 exposure is living in Marshfield; right?

2 A That's correct.

3 Q And you'll agree that there was no crocidolite
4 asbestos used in Marshfield; right?

5 A I'm not the expert on that. If it's -- that's my
6 understanding. Again, I'm a physician, medical. I'm
7 not a product specialist.

8 Q Okay. So you don't have any information on
9 crocidolite being used at the plant; right?

10 A I don't have any information.

11 Q And according to you, the potential for community
12 exposure spanned 22 years; right?

13 A Yes.

14 Q Okay. And Mr. Parker issued a report and opined
15 that based on some calculations he did, that the annual
16 use of asbestos at the Marshfield plant was 352 tons;
17 right?

18 A I'll take your word for it.

19 Q Okay. That's in Mr. Parker's reports. Now, we're
20 going to compare this now to the studies that you relied
21 on, and so you looked at a couple of studies relating to
22 some crocidolite mines in South Africa; right?

23 A Yes.

24 Q Okay. And you looked at a series of Italian
25 studies surrounding an asbestos cement plant; right?

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1 A Yes.

2 Q And then the last one is the Tarres study that you
3 also looked at which was in Spain and involved a Spanish
4 cement plant; right?

5 A Yes.

6 Q And there were other studies in fairness I know
7 that you looked at. These were the ones where we could
8 pull information from. So if there are others that you
9 want to talk about, we can do that as well.

10 THE COURT: And counsel, just for my benefit
11 when you say *pull information from*, you're representing
12 that these studies actually provided exposure or tons of
13 asbestos information?

14 MS. ELLIS: Correct, Your Honor. These numbers
15 were pulled from the studies.

16 THE COURT: And I don't know, is this something
17 that one of your experts is going to opine on?

18 MS. ELLIS: No, Your Honor.

19 THE COURT: I don't know where you -- I don't
20 know how I assume that this is accurate, the right-hand
21 column. Certainly this witness can't tell me that.

22 MS. ELLIS: Well, I think, Your Honor, that
23 Dr. Anderson could tell us.

24 THE COURT: All right. Well, let's explore
25 that because he just testified he didn't have that
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1 information and couldn't get it.

2 MS. ELLIS: Okay. If we need to pull the
3 studies up, I will try to do --

4 THE COURT: Why don't we do that.

5 MS. ELLIS: Okay. So let's put this study --

6 THE COURT: I'm sorry. Why don't you explore
7 with this witness.

8 MS. ELLIS: Okay. Okay.

9

10 BY MS. ELLIS:

11 Q So Dr. Anderson, in the Wagner is the first entry
12 we have there. Again, it's the South African
13 crocidolite mines; correct?

14 A Yes.

15 Q And Wagner identified nine people with no other
16 exposure than living around or being around those mines;
17 right? Who had mesothelioma; right?

18 A Yes.

19 Q And it was a crocidolite mine, so obviously there
20 was crocidolite there; right?

21 A Yes.

22 Q Okay. And I used 50 as a conservative number, but
23 those mines were in operation for I think upwards of 70
24 or 80 years. Does that comport with what you know about
25 those mines?

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1 A Yeah. I mean there's ore in the area, in the
2 community.

3 Q Right. And Wagner reported in his followup in '65
4 that there were 80,000 tons of crocidolite mined there
5 per year. Does that surprise you?

6 A I don't know.

7 Q Okay. And again, if we want to pull it out and
8 look at it, we can do that.

9 And then Webster is another South African study and
10 there he identified 76 mesotheliomas with no other
11 exposure other than living near the mines; right?

12 A I would have to look specifically.

13 Q Okay. Let's pull this out.

14 THE COURT: We're not going to spend time
15 having this witness read from a document.

16 MS. ELLIS: Okay. I'll leave it alone.

17 THE COURT: Simply -- fine. Let's move along.

18 MS. ELLIS: I'll move along.

19 BY MS. ELLIS:

20 Q And the point being that to make a comparison
21 between these facilities in the studies and the mines in
22 the studies in Marshfield, Marshfield doesn't compare to
23 those locations; right?

24 A It compares to having a factory that emitted
25 asbestos into the community near -- the people lived

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1 near the facilities. They did the same here. As far as
2 the volume of asbestos, it's different.

3 Q Okay. And in terms of there being the existence of
4 people in the community with mesothelioma with no other
5 exposure, it's different; right?

6 A Again, a study hasn't been done to look at are
7 there other mesotheliomas in the community in
8 Marshfield. But there have -- as far as the cases here,
9 there are no only-community cases.

10 Q Okay. And so -- and it's also pretty dramatically
11 different in terms of the years of use of asbestos;
12 right? I mean Marshfield had 22 years.

13 A Certainly the opportunity for people to be exposed
14 over a longer period of time and have a much longer
15 latency, if you look at when these facilities operated,
16 they were all operating before Marshfield started. And
17 Marshfield closed fairly recently. Again, all of the
18 cases we have are really recent cases, not earlier
19 cases. So the latency period, the ability to see
20 community mesos in these other studies are in relation
21 to how long it was there, how long the people lived
22 there.

23 THE COURT: Are there occupational studies of
24 individuals who would not have otherwise been exposed to
25 asbestos? In other words, who would not have been

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1 exposed to asbestos except on the job or with respect to
2 asbestos fibers that they brought home with them from
3 the job?

4 THE WITNESS: Yes, there are studies like that.
5 And those -- that's determined with a case control study
6 where you look at the mesotheliomas and see what their
7 exposures were. And about between 14 percent in the
8 mesothelioma registries in Australia or France, there's
9 only an exposure for the community or for household.

10 THE COURT: Actually you just answered the
11 opposite question. But I thought you said that for
12 community or household you expect to see -- I think you
13 said one in a million?

14 THE WITNESS: Well, that's the so-called
15 background, totally unexposed one in a million.

16 THE COURT: And then nonoccupational, you'd
17 expect to see --

18 THE WITNESS: About four times. Four to seven
19 or eight times as many.

20 THE COURT: All right. And then with respect
21 to occupational exposures.

22 THE WITNESS: That's 80 percent of the mesos
23 are coming out of occupational.

24 THE COURT: In a million people who worked in
25 asbestos --

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1 THE WITNESS: Well, that's maybe 26 to -- it
2 depends. It all depends on the --

3 THE COURT: Level of concentration.

4 THE WITNESS: But it's at least probably ten
5 times more than in the community.

6 THE COURT: So that would give you 40 in a
7 million.

8 THE WITNESS: I mean some of the studies, ten
9 percent of the work force have developed mesothelioma.

10 THE COURT: Which is 100,000 in a million.

11 THE WITNESS: Yes.

12 THE COURT: That's what I'm trying to get at.

13 THE WITNESS: Yeah. I mean for workers, it
14 depends how long they were there and whether it was --

15 THE COURT: It depends on all the same factors
16 that you'd look at with respect to community, which is
17 frequently, regularity, and proximity of the exposures.

18 THE WITNESS: Severity of the exposure, yeah.

19 THE COURT: Okay.

20 THE WITNESS: How long they survive afterwards.

21 THE COURT: But are there studies that tell us
22 the likelihood for a worker who has substantial exposure
23 to asbestos, what the range is in terms of the number
24 that develop the mesothelioma disease?

25 THE WITNESS: All of the studies have of the
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1 worker populations --

2 THE COURT: Right.

3 THE WITNESS: And that's the challenge is there
4 aren't that many that have been able to delineate -- we
5 don't know how many people worked in Marshfield. We
6 don't have that list.

7 THE COURT: Understood.

8 THE WITNESS: So we can't say what --

9 THE COURT: I'm not asking you that. I'm
10 asking you generally in meta studies, is there data as
11 to the likelihood of contracting the disease based on
12 occupational exposures?

13 THE WITNESS: It's usually looked at in
14 medicine when you see the disease, what's the
15 likelihood.

16 THE COURT: But you have data one in a
17 million --

18 THE WITNESS: Is the background.

19 THE COURT: -- which is the background.

20 THE WITNESS: Right.

21 THE COURT: You have data four in a million if
22 it's nonoccupation.

23 THE WITNESS: Four --

24 THE COURT: Do you have data for occupational?

25 THE WITNESS: In the studies --
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1 THE COURT: The answer could be no, I don't.

2 THE WITNESS: Well, I don't have it because
3 it's different in each plant. It's a different
4 approach. So it's not a four in a million. That is
5 based on like the population in Wisconsin. So in
6 Wisconsin --

7 THE COURT: I get it.

8 THE WITNESS: -- if we had no asbestos --

9 THE COURT: Well, but you could extrapolate
10 from studies of an individual plant. If it was, as you
11 suggest, ten percent, it would be 100,000 in a million.

12 THE WITNESS: Yes.

13 THE COURT: If we extrapolate for a million
14 workers working in the same place, if you did enough
15 separate studies, you would come up with a fairly
16 reliable percentage for per million; right?

17 THE WITNESS: There are so many different types
18 of asbestos exposure. So the vast majority of the
19 asbestos exposures are like in construction workers so
20 that -- and that's --

21 THE COURT: And do we know what percentage of
22 construction workers --

23 THE WITNESS: No.

24 THE COURT: -- have developed or contracted the
25 disease?

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1 THE WITNESS: No.

2 THE COURT: Seems like that would be a pretty
3 helpful piece of information if you're trying to
4 determine what the marginal impact is of the community
5 exposure; right?

6 THE WITNESS: The way that's investigated
7 epidemiologically is to look at all of the meso --
8 capture all of the mesotheliomas, interview those
9 people, and that's what I'm saying these relative --

10 THE COURT: But no one has done a study of
11 population of workers?

12 THE WITNESS: All different workers.

13 THE COURT: Right.

14 THE WITNESS: Right. So --

15 THE COURT: So what percent of construction
16 workers, for example, have developed --

17 THE WITNESS: You don't know how many
18 construction workers there are.

19 THE COURT: Right. What about people working
20 in a plant like the one in Marshfield?

21 THE WITNESS: Nobody studied that plant.

22 THE COURT: Like Marshfield.

23 THE WITNESS: Well, like. The only -- the only
24 plants that have been studied are the ones I'm
25 referencing here where they then went out and looked at
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1 the community as well.

2 THE COURT: It's never been studied by a plant
3 of workers. That's just astounding, don't you think?

4 THE WITNESS: Very few. Very few. It's very
5 expensive and very difficult to do. It's like in
6 Marshfield.

7 THE COURT: And as you sit here today, you've
8 never seen a study of a particular population of
9 workers.

10 THE WITNESS: Oh, there's studies I was
11 involved in with the asbestos workers' union.

12 THE COURT: Okay. That's a good example.

13 THE WITNESS: 10,000 people.

14 THE COURT: And how many of those --

15 THE WITNESS: And those are the ones where we
16 saw very high exposures --

17 THE COURT: Which means what?

18 THE WITNESS: -- of ten percent.

19 THE COURT: Ten percent.

20 THE WITNESS: Yeah. Is the highest in those
21 people who live long enough and have the longest
22 duration of exposure.

23 THE COURT: So let me ask a question --

24 THE WITNESS: And that's the highest group.

25 THE COURT: And that might not be the
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1 percentage applicable to this plant, but --

2 THE WITNESS: We don't know how many people
3 have lived at the plant and died. You've got to know
4 that. You've got to know many of them.

5 THE COURT: You don't have the data. You don't
6 have the medical --

7 THE WITNESS: We don't have the denominator --

8 THE COURT: -- for each.

9 THE WITNESS: -- data. Yeah, we don't have the
10 population there.

11 THE COURT: How do you have it for the four and
12 one million for nonoccupational because other countries
13 track the specific disease? Or are you assuming that
14 they --

15 THE WITNESS: Right. And that's what the
16 literature suggests.

17 THE COURT: And in the United States we just
18 haven't tracked that.

19 THE WITNESS: We have not tracked that.

20 THE COURT: I'm with you now. All right. Any
21 future questions for this witness, Counsel?

22 MS. ELLIS: I want a couple of closing points.

23 BY MS. ELLIS:

24 Q And moving on from this, these are studies that did
25 find community mesos around plants; right?

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1 A Yes.

2 Q That you talked about; right? There are also
3 studies that have been done around plants emitting
4 asbestos that found no community mesos, no risk for
5 mesothelioma in the community; right?

6 A Yes.

7 Q Right. Dr. Selikoff did a study in 1979, right, in
8 Patterson, New Jersey --

9 A Right.

10 Q -- right? Around the plant that you studied;
11 correct?

12 A Yes.

13 Q The Amazon plant. And they even tested homes
14 around the plant; right? For asbestos; correct?

15 A I think we looked for that asbestos as we looked
16 for it in the workers' homes and we found it.

17 Q You did. And they found amosite in the homes
18 around the plant; right?

19 A If you have the paper. I would have to dig that
20 out.

21 Q All right. Let's take a look at it.

22 A I think you're referring to our family homes that
23 we went into.

24 Q Okay. This is a pretty raw copy and I apologize if
25 it's not clear. Here we go. Many years later, we

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1 collected samples of houses near the factory. It still
2 contained appreciable numbers of amosite asbestos
3 fibers; right?

4 A That was our household people.

5 Q Okay. And this is reported in Dr. Selikoff's
6 community paper; right?

7 A Do you have the title up there?

8 Q Yes. I'm sorry. "Mortality Experience of
9 Residents in the Neighborhood of an Asbestos Factory";
10 right?

11 A Yes.

12 Q So they sampled and found dust in the community;
13 right?

14 A In the households of the workers.

15 Q Right. But found no increased risk in that
16 community for mesothelioma; right?

17 A Not in the general community, no.

18 Q Okay. And then there are other studies that have
19 looked at communities around plants and also found no
20 increased risk for mesothelioma; right?

21 A I think there have been a few. Usually they're
22 like what would be Marshfield, much smaller.

23 Q Okay. Well, you didn't compare Marshfield to the
24 facilities and towns in those studies either, did you?

25 A I chose the best studies that had data in them that
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1 we could use to assess populations. Those other studies
2 didn't have that.

3 Q Okay. So that's a no. You did not compare
4 Marshfield to the facilities in those studies?

5 A No.

6 Q Okay. Thank you. And I will move to your
7 household study that you also conducted in relation to
8 this same amosite plant in Patterson, New Jersey; right?

9 A Yes.

10 Q And you looked at the household members who lived
11 with workers from that plant; right?

12 A Yes.

13 Q And you identified household workers who had no
14 other known occupational exposure; right?

15 A Yes.

16 Q Only exposure was living in the house. And you
17 identified increased levels of asbestos-related disease
18 in the household members; right?

19 A Yes.

20 Q And there you tested the homes of those
21 individuals; correct?

22 A A few homes.

23 Q You tested the homes 30 years after the worker no
24 longer worked in the plant; right?

25 A Yes.

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1 Q You found asbestos in the homes; right?

2 A Yes.

3 Q Asbestos of the type that was in the factory;
4 right?

5 A Yes.

6 Q And according to your paper, that corroborated that
7 the exposures occurred in the home; right?

8 A It suggested the persistence of asbestos in the
9 homes.

10 Q Okay.

11 A They weren't the homes where the mesothelioma
12 occurred.

13 Q Well, this paper doesn't say that; right?

14 A No, we just -- the homes that we could get into
15 that were still standing, went into the attics and the
16 rafters and found some of the asbestos.

17 THE COURT: And you didn't do that here.

18 THE WITNESS: No.

19 THE COURT: All right. Next question.

20 BY MS. ELLIS:

21 Q Okay. And you're aware that Mr. Parker tested
22 houses and soil right on the perimeter of the plant in
23 Marshfield; right?

24 A I haven't seen that, no.

25 Q Okay. I'll represent to you Mr. Parker tested
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1 recently, I believe in 2014, tested, what is it, 16 --
2 nine houses on the perimeter of the plant, attic dust
3 there, and found no asbestos in those homes. And seven
4 soils samples around Marshfield, some at the waste
5 deposit sites and found no asbestos. Does that impact
6 your opinions in any way?

7 A No.

8 THE COURT: Why not?

9 THE WITNESS: What it would pertain to is the
10 persistence of it in the home and have the people
11 adequately cleaned it up. From a public health
12 standpoint that would be helpful to suggest that we
13 wouldn't need to be warning people about living in these
14 homes because they didn't identify asbestos.

15 THE COURT: Wouldn't it help to identify
16 exposure if you're looking at the soil? I mean if
17 you're able to identify the period of time that the
18 plant was in operation, wouldn't that show you
19 exposures?

20 THE WITNESS: If there were in the plants,
21 what, stopped in '74?

22 THE COURT: Right. No --

23 THE WITNESS: So 32 years ago. If it was
24 tested at the time --

25 THE COURT: You know what? I withdraw the
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1 question. Anything more for this witness?

2 MS. ELLIS: I'm going to wrap up. I promise.

3 Two points.

4 BY MS. ELLIS:

5 Q The vermiculite study that you did in the towns
6 that are bigger than Marshfield to see if there was an
7 impact on the community, you tested the soil for
8 vermiculite in that study, didn't you?

9 A We did not.

10 Q Okay. Well, let's look at your paper on that. I'm
11 going to show you the front cover of it just to give us
12 some context here. Does that look familiar to you,
13 Dr. Anderson?

14 A Yeah. That's our grant application that didn't get
15 funded.

16 Q And then you state here, this is on page five,
17 "Several soil samples were collected; analysis for
18 asbestos is in progress." Right?

19 A The EPA did that. That wasn't us.

20 Q Okay. Well, do you recall what the results of the
21 soil samples were?

22 A No.

23 Q Okay. Did you consider that in looking at the data
24 that you were looking at in these towns about
25 vermiculite?

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1 A No.

2 Q I'm going to close with a point and talk about lung
3 cancer for a moment. We've been talking about
4 mesothelioma this entire time. There are two lung
5 cancer cases that are part of this group; right?

6 A Yes.

7 Q Okay. That's the Heckel case and the Prust case;
8 correct?

9 A Yes.

10 Q Okay. And you've issued the same opinion in those
11 two cases that we were talking about all along; right?

12 A Yes.

13 Q The amount of exposure with the three pieces
14 contributing; right?

15 A Yes.

16 Q Okay. And you agree that Mrs. Heckel and Mr. Prust
17 were both heavy smokers; right?

18 A I think there is some -- were former smokers, but
19 yes, they had smoked.

20 Q So they have this additional component of cigarette
21 smoke as part of their causation; right?

22 A Yes.

23 Q Okay. And you would also agree with me that -- so
24 asbestos is a dose-response disease; right?

25 A Yes.

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1 Q The higher the dose, the higher the risk for the
2 disease; right?

3 A Yes.

4 Q And lung cancer generally requires a higher dose
5 than mesothelioma, right, to attribute to asbestos
6 exposure; right?

7 A I would say the new data coming out is it's going
8 down lower doses. But typically, yes, you would see
9 lung cancers with higher exposures.

10 Q Okay. And you didn't cite a single study that
11 evaluated populations around plants or mines that found
12 an increased risk for lung cancer in those communities;
13 right?

14 A I did have the one study in Japan.

15 Q Right. The Kumagai study?

16 A Yes. Where they had a community excess there.

17 Q And that study said in the general community around
18 the plant, there is no increased risk for lung cancer
19 just from living around this plant; right?

20 A Just near the plant, yes.

21 Q Right. And then they kind of reconstructed the
22 data and they looked at lung cancers in one particular
23 quadrant of the plant; right?

24 A The quadrant with the highest estimated exposure.

25 Q Right. And I think they considered prevailing
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1 winds and various other factors about this plant
2 relative to that quadrant; right?

3 A Yes.

4 Q And they found an increased risk, a slightly
5 elevated risk for lung cancer just in the men that lived
6 in that quadrant; right?

7 A Yes.

8 Q Not in the women; correct?

9 A No, there were very new women.

10 Q This is the study you're relying on; right?

11 A Yes.

12 Q Okay. And that's the basis for your opinion in
13 these cases that the lung cancers can be linked in any
14 meaningful way to community exposure; right?

15 A That it's part of the cumulative exposure.

16 Q And you didn't analyze whether Mrs. Heckel or
17 Mr. Prust lived in a particular quadrant relative to the
18 plant where their exposures would be higher, did you?

19 A No.

20 Q And you don't know the dose of any of these
21 plaintiffs' exposures in the community; correct?

22 A Just the length of time.

23 Q Just the length of time.

24 A Time is a surrogate for dose.

25 Q And what's your source for stating that time is a
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1 surrogate for dose?

2 A The literature looks at how long people have -- all
3 of them report how long people live in the homes; how
4 long people live in the community in these community
5 studies; what they do is they say the person has to have
6 lived at least one year in the community to be included.
7 So that's -- that's how you use it. You look at all of
8 the old literature, the reports are the person lived or
9 worked, how long they worked at the plant, and that's a
10 surrogate for exposure.

11 Q Well, you would also agree that in these studies
12 they found disease at multiple different intervals
13 across the time spectrum; right?

14 A Yes.

15 Q Right. So there were disease found in shorter
16 durations of residents or whatever factory you're
17 looking at; right?

18 A Most of them -- everybody is together. They're
19 unable to sort out the length of time people lived
20 there.

21 Q Which --

22 A In the Japanese one, they actually did a survey of
23 all the people living in the community and were able to
24 gather that information and that's what they used.

25 Q And didn't find a risk, an elevated risk in that
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1 community; right?

2 A Just the areas immediately adjacent to the plant.

3 Q And you don't know how much or what the dose or
4 level of exposure for any of these plaintiffs was in
5 their household; right?

6 A No.

7 Q And you don't know their dose associated from their
8 own work clothes in their household; right?

9 A No.

10 Q And you don't know the dose associated from any
11 exposure from a family member's work clothes; right?

12 A You don't know the quantitative dose.

13 Q You don't know any type of dose; right?

14 A What we have is a dose, is we have these are people
15 who were part of a risk population. So they meet the
16 criteria of being individuals who lived in homes with
17 workers or lived near communities. That is a group of
18 people who the various studies have shown are at
19 increased risk and actually have had that risk expressed
20 as disease occurring. So you look at the studies that
21 are done on case control for the mesothelioma
22 registries, one of the factors where people with
23 mesothelioma are more likely than those without it to
24 have household or community exposure. So they're part
25 of a class of individuals who are at greater risk.

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1 Q Right. And to take that step any further than
2 that, you would then have to make that comparison that
3 we've been talking about this time; right? About the
4 levels and exposure from the plants you're looking at in
5 the studies and the plant we have here; right?

6 A In order to be in the class you need to live in an
7 area --

8 Q Right --

9 A -- for a given period of time.

10 Q Right.

11 A You don't need to know -- and that's all the
12 classification that's been done. And with that
13 classification, we find that as a class of people they
14 are at greater risk of developing disease. You don't
15 need to know what the dose is. If you want to project
16 what's the likelihood that if you live in this area
17 you're going to develop disease, that's a different
18 approach. But once you have the disease --

19 THE COURT: Do you recall what the population
20 was that was studied in this -- is it Kamatsu (ph)
21 study?

22 THE WITNESS: Yeah.

23 THE COURT: Do you recall what the total
24 population was?

25 THE WITNESS: Gee, I would have to -- I don't
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1 know. No, I don't know.

2 THE COURT: All right. Is it of concern to you
3 that there's only this single study given the relatively
4 low manifestations of mesothelioma -- I keep
5 mispronouncing that. Why don't you say it once.

6 THE WITNESS: Mesothelioma.

7 THE COURT: Mesothelioma. Is it of concern to
8 you that there's only this single study given the very
9 low percentage of disclosure? You could just have, I
10 suppose, an anomalous single event in a quadrant close
11 to the plant and that would skew into -- if you
12 extrapolate from that.

13 THE WITNESS: Here we're talking about lung
14 cancer -- mesothelioma is quite different.

15 THE COURT: Right. I'm sorry. That's fair.
16 But the lung cancers that present themselves from
17 asbestos exposure, from mesothelioma exposure, is
18 substantial less likely to happen than presented from
19 cigarette exposure; right?

20 THE WITNESS: That's the difficulty in studying
21 the lung cancer. Why --

22 THE COURT: Well, that's why I'm asking --

23 THE WITNESS: -- there's only one study is for
24 lung cancer, there's many other contributing causes.

25 THE COURT: So that's why I'm asking --
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1 THE WITNESS: For mesothelioma there's only
2 asbestos.

3 THE COURT: That's what I'm asking you. Isn't
4 it a concern to you that there's only this single study,
5 that that's all you have to opine that it was a
6 substantial contributing factor to either of Heckel or
7 Prust's exposure.

8 THE WITNESS: It's the same contribution to the
9 exposure. I would say the disease -- there's less
10 information developed on community exposure alone.

11 THE COURT: Right.

12 THE WITNESS: Now --

13 THE COURT: Is that a concern to you.

14 THE WITNESS: That's a concern. Part of the
15 story here also is they had enough exposure to develop
16 the pleural plaques. So there's other indications for
17 asbestos exposure in these individuals. Now yes, the
18 attribution or how much, if it was just the household
19 exposure for the lung cancers, if that was their only
20 exposure, that would be a challenge and then the only
21 thing we have is this one study. But we do know that
22 there's exposures occurring that are above an ambient
23 sort of exposure, a house without any asbestos worker in
24 it or in a community. So it adds to the cumulative
25 exposure. And that's what causes -- its cumulative

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1 exposure is more important for lung cancer than
2 mesothelioma since we see mesothelioma after only a
3 single day of exposure.

4 THE COURT: All right. Anymore questions for
5 this witness?

6 MS. ELLIS: I'm about to wrap up.

7 BY MS. ELLIS:

8 Q To carry on that point, you see mesothelioma after
9 a single day of exposure, and that's in the occupational
10 setting; right?

11 A Yes.

12 Q So there are no community household exposures with
13 just a single day in those settings where mesothelioma
14 has been identified; right?

15 A Living in the household that long, no.

16 Q Right. Or living in the community; right?

17 A No.

18 Q Okay. And you're not aware of any study that
19 attributes risk for people around a plant or a mine who
20 just travel in and out of the town; right? Who don't
21 live there, but they're just coming in to shop and doing
22 errands and things likes that. There's no study like
23 that; is there?

24 A No.

25 Q Okay. For several of our plaintiffs like
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1 Mr. Masephol, for example, he never lived in Marshfield;
2 right?

3 A Right.

4 Q He lived 12 miles outside of town in Chili his
5 entire life; right?

6 A Yes.

7 Q And the only allegations here are that he drove
8 back and forth to work and that he would come to town
9 about once a week to run an errand or go to a hardware
10 store; right?

11 A Yes.

12 Q And you called that a substantial exposure that
13 contributed to his cumulative; correct?

14 A I say that if he breathed the air in the same area
15 the people lived there for that proportional time that
16 he was there, that's contributing to his exposure and
17 that's an environmental exposure.

18 Q Okay. And you called it substantial; right?

19 A Yes.

20 Q Okay. And then Mr. Seehafer, for example, he never
21 lived in Marshfield; correct?

22 A Yeah. I mean with all of these guys --

23 Q Okay. Fair enough.

24 A -- how much they lived and what they did, but if he
25 didn't live there, yeah, it would be the same thing.

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1 They all shopped in the area. I don't know if he's the
2 one that went to school across the street. Grade school
3 was right across the street from the plant. So one of
4 them went to school there and that would be community
5 exposure.

6 Q And so in your report you stated that there was an
7 increased risk for disease in Marshfield within 1.25
8 miles of the plant; right?

9 A That's the area where I felt there would be a
10 substantial contribution of exposure.

11 Q And you used that radius based on those studies
12 that we just talked about; right?

13 A All of these, yeah. The studies would calculate
14 the excess risk at 2,000 meters. 500 meters it's even a
15 higher risk.

16 Q Okay.

17 A But it begins to taper out with the distance.

18 Q And you didn't base that radius on where the
19 diseases occurred in Marshfield; right?

20 A No.

21 Q Okay. So you didn't plot out where these
22 plaintiffs lived to determine how that impacted your
23 radius; right?

24 A No.

25 Q Okay. And so my point being you -- that's the zone
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1 of risk, I will call it in your opinion, but yet you
2 attributed community exposure in cases for people who
3 never lived in that area; right?

4 A The zone of exposure is the 1.2 miles and the time
5 you spent within that 1.2 miles contributes to exposure.
6 If you were living there in that community, you
7 obviously spent a lot more time there than somebody
8 passing through.

9 Q Okay. And that risk you testified at your
10 deposition was for mesothelioma; right? The 1.2 miles;
11 right?

12 A Yes.

13 Q And so you attributed causation in cases we have
14 here, Mrs. Heckel and Mr. Prust, even though those cases
15 were lung cancer; right?

16 A Again, it contributed. That's a significant source
17 of exposure to the cumulative exposure.

18 Q Okay.

19 A Calculated the same way.

20 Q Okay.

21 THE COURT: Very briefly, Counsel. Was there
22 something more, but it better be new.

23 MS. ELLIS: Okay. I think I am done. I will
24 rest, Your Honor. Thank you.

25 THE COURT: All right. We are going to take
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1 our morning break at this time. We'll reconvene at
2 11:05 and continue until 12:30. I have a one o'clock
3 hearing and we -- so we'll take our lunch break at 12:30
4 and reconvene at 1:30. That hearing will be in another
5 courtroom, so you don't need to move your materials.

6 The only other thing I want to -- point I want to
7 make is that defendants have made reference to a number
8 of materials without making clear what they are for
9 purposes of the record. I would ask that you label
10 anything that was put before this witness as an exhibit
11 and I'll ask you to put that or make a statement on the
12 record as to what those are. I'm going to simply accept
13 them for purposes of continuity of this record, not on
14 an evidence basis at this point. Exhibits -- but they
15 should be made a part of the record and they should be
16 labeled beginning with the letter A. Plaintiffs may do
17 the same thing beginning with the number 1.

18 And I'll ask if there's anything more before we
19 take our break from the plaintiff.

20 MR. FINCH: Not before we take a break. I
21 would prefer to do my redirect after the break if we're
22 taking a break now.

23 THE COURT: When else did you -- well, I'm not
24 even going to go there. What about the defendants?
25 Anything more?

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1 MS. ELLIS: No, Your Honor.

2 THE COURT: All right. Very good. We'll take
3 our break now. We'll reconvene at 11:05.

4 (Recess 10:51-11:05 a.m.)

5 THE COURT: All right. You may proceed.

6 MR. FINCH: May it please the Court.

7 REDIRECT EXAMINATION

8 BY MR. FINCH:

9 Q Dr. Anderson, I believe the Court has recognized
10 you as an expert. But does this slide set forth some of
11 your most relevant --

12 THE COURT: We're not going to spend any time
13 on his experience. You should have assumed that all of
14 this was already in because we've already done a direct.
15 I've already read his report. All of that is in. What
16 you're doing is, as you accurately put it so I didn't
17 make the point, a redirect, and so you should be getting
18 to the heart of what's been raised by plaintiff (sic).

19 BY MR. FINCH:

20 Q There was a series of questions that basically the
21 heart of it goes to quantification of exposure or level
22 of exposure. Do you recall those questions?

23 A Yes.

24 Q Okay. Do you need a quantitative estimate of
25 exposure to make a causal determination that a given

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1 type or nature of asbestos exposure is sufficient to
2 cause mesothelioma?

3 A No.

4 Q Can you explain to the Judge why not?

5 THE COURT: I get that already and I'm going to
6 allow him to testify that it's a cause of mesothelioma,
7 even if I can't pronounce it. The question is whether
8 it's enough to opine that it substantially contributed
9 to the mesothelioma. Mesothelioma.

10 BY MR. FINCH:

11 Q Do you need a quantitative estimate of dose in
12 order to opine that if you have a situation where there
13 are multiple sources of exposure, each of which is of
14 the nature and the type that is being deemed sufficient
15 to cause mesothelioma alone, do you need a quantitative
16 estimate of dose to say that a particular subcomponent
17 is a substantial contributing cause of some person's
18 mesothelioma?

19 A No.

20 Q Can you explain to the Judge why not?

21 A That's because independently you assess length of
22 time, what the individual did, where they were. That
23 qualitative assessment is consistent with what's been
24 reported in the literature as being causal. There's
25 enough of those kind of cases, enough of those studies

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1 out there that, in fact, each of those are significant
2 contributors.

3 THE COURT: Let me ask you this: You're
4 expressing a medical opinion, not a legal opinion.

5 THE WITNESS: Yes.

6 THE COURT: So when you say substantial
7 contributing factor, you're saying that it is among the
8 factors that you, as a medical expert, would look at to
9 determine the cause of the individual's mesothelioma.
10 I'm still not going to get it.

11 THE WITNESS: Yes.

12 THE COURT: In any event, that's what you're
13 opining on.

14 THE WITNESS: Yes. Basically I'm saying there
15 are some exposure circumstances that you specifically
16 look for that add to that. And you look for them
17 because they've been shown to be significant in the
18 literature, different from driving on the street.

19 THE COURT: I'm with you. But you, as a
20 medical expert, would also begin with the most obvious;
21 right? So the most obvious, the greatest cause that you
22 know about from these studies and from your own practice
23 is occupational exposure; right?

24 THE WITNESS: The highest proportion of people
25 with mesothelioma have had an occupational exposure.

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1 THE COURT: All right.

2 THE WITNESS: But it can be many years or a few
3 years. If it falls in between, you may have had short
4 years, but you lived in the community for 75.

5 THE COURT: I got it. All right.

6 THE WITNESS: Okay.

7 THE COURT: But that's what you would look at
8 first.

9 THE WITNESS: Yes.

10 THE COURT: All right. And then you would look
11 for other exposures; right?

12 THE WITNESS: Yes.

13 THE COURT: What I've been calling
14 nonoccupational but what the parties have called
15 community or specific residential home exposure.

16 THE WITNESS: Yes.

17 THE COURT: Okay. And we know from the studies
18 that the likelihood that it is occupationally caused is
19 much greater than that it's a nonoccupational cause;
20 right?

21 THE WITNESS: The contribution to this
22 cumulative exposure --

23 THE COURT: Is much greater.

24 THE WITNESS: -- is more likely to be the
25 largest component from the occupational component unless

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1 the exposure or the length of time of work is very
2 short.

3 THE COURT: Right. But none of the -- none of
4 the individuals here that you've opined on fit that
5 category. We know that they all worked a long period of
6 time in this plant; right?

7 MR. FINCH: Some of them didn't, Your Honor.

8 THE WITNESS: Some of them didn't.

9 THE COURT: Counsel, you'll have an opportunity
10 to explain. I'm simply asking the question.

11 THE WITNESS: I think some were like five
12 years, which is a short period of a working lifetime.

13 THE COURT: But you're not talking about a
14 working lifetime, you're talking about exposure -- this
15 is medical. This isn't argumentative. For medical
16 purposes, it's your opinion that five years is not a
17 long exposure period? You've never testified to that.
18 It's a long period of time, five years.

19 THE WITNESS: It's a long period of time --

20 THE COURT: For exposure to asbestos on the
21 job.

22 THE WITNESS: It is, but it's not a long period
23 of time compared to all the people who work with
24 asbestos.

25 THE COURT: All right. Is it a long period of
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1 time compared to someone who lives in a community with
2 communal exposures of 20 years? Five years on the job,
3 every day, eight hours a day, direct exposure to
4 asbestos.

5 THE WITNESS: If it's somebody who lives right
6 nearby who's writing letters, complaining about the
7 cloud of dust coming through, it could be very
8 comparable percentagewise. I mean the doles (ph) could
9 be better controlled in the factory because they have
10 processes to reduce that where in the community it just
11 blows right out.

12 THE COURT: All right. Now, you are asked for
13 an individual who works, let's assume, 20 years or more
14 in this plant, the relative contribution of those two
15 occupational and nonoccupational exposures, the relative
16 contribution. Can you say anything about the relative
17 contribution?

18 THE WITNESS: What I did do, and that's in the
19 deposition because that's frequently what the jury gets
20 asked is you have to apportion this.

21 THE COURT: Right.

22 THE WITNESS: And really the disease is caused
23 by the total cumulative. It's --

24 THE COURT: So what's your answer? I know
25 you've been asked.

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1 THE WITNESS: My answer is you can do that and
2 you can do that by converting the length of time in the
3 community to work years.

4 THE COURT: Okay. And how --

5 THE WITNESS: So at 20 years, what I use is
6 it's about -- when you look at the hours in a workday,
7 you work 40 hours a week and you have all these other
8 hours that you're spending, so the level that you need
9 to develop a workday would be about .4 in a community.
10 So if you're living within a mile and a quarter, 1.2, a
11 mile, give or take, I would multiply those years by .4
12 and add those to the worker years, sum those up, and
13 then divide it. Same would be for the household.

14 THE COURT: And I want to stick with that for a
15 second. So that would be living within 1.25 miles.

16 THE WITNESS: Yes.

17 THE COURT: Which you're assuming would, I
18 guess, be what -- how many hours per day?

19 THE WITNESS: Well, if you're 8 hours -- 40
20 hours --

21 THE COURT: You're not going to spend the rest
22 of your time in your house.

23 THE WITNESS: Well, you're going to be in the
24 community. In the air --

25 THE COURT: But you just got done saying we're
HENRY ANDERSON - REDIRECT

1 looking at the exposure within 1.25 miles. But that's
2 the sole exposure --

3 THE WITNESS: If you live in that area. If you
4 live in that area --

5 THE COURT: Yeah.

6 THE WITNESS: -- and you're spending those
7 hours --

8 THE COURT: What hours? Eight hours?

9 THE WITNESS: You're probably spending most of
10 the hours that you're not at the workplace.

11 THE COURT: Why do you say that?

12 THE WITNESS: Well, you're going to come home
13 from work.

14 THE COURT: Right.

15 THE WITNESS: How many hours do you spend in
16 your house?

17 THE COURT: Eight, ten.

18 THE WITNESS: Yeah. Well, probably more than
19 that.

20 THE COURT: Actually, no.

21 THE WITNESS: You work longer hours than a lot
22 of people. I don't know.

23 THE COURT: So I don't know --

24 THE WITNESS: You drive. And you drive to the
25 park --

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1 THE COURT: Hang on.

2 THE WITNESS: -- and you go here --

3 THE COURT: Hang on. Are you equating the
4 eight hours of exposure on the job as the equivalent to
5 the same number of hours within 1.25 miles of the plant?

6 THE WITNESS: No. The hours -- I'm equating it
7 to the -- using the 16 hours that you're not at work
8 plus --

9 THE COURT: We just got done saying you can't
10 assume 16 hours. But let's assume 12.

11 THE WITNESS: I mean you can --

12 THE COURT: Are you equating eight hours
13 working with 12 hours within 1.25 miles of the plant?

14 THE WITNESS: More than 12 hours because --

15 THE COURT: Fine. Okay. Hang on. Hang on.
16 You're just not getting to the question I'm trying to
17 ask. My question is on what basis do you equate those
18 two? How do you know that exposure with 1.25 miles for
19 12 plus hours is the equivalent of eight hours on the
20 job in terms of exposure?

21 THE WITNESS: Okay. What I do is I look to the
22 literature.

23 THE COURT: And that's what I'm asking you for.

24 THE WITNESS: So I look to the literature and I
25 look at the relative -- the ratio of the relative risk.

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1 So we have these studies and this one paper that
2 averaged them all and said -- or the workers have 27
3 full risk in that particular plant. And in the
4 community, within the 1.2 miles, it was 10. So that's
5 about a third.

6 So one day in the plant, and of course when you're
7 in the plant you're not exposed at a high level all the
8 time, it's just hours in the plant, you're exposed
9 differently than in the community. So --

10 THE COURT: All right. And --

11 THE WITNESS: -- the study in the community --

12 THE COURT: Hang on now. The study that you're
13 relying on for the ten-fold exposure is a cumulative
14 study?

15 THE WITNESS: Yes. And then broken --

16 THE COURT: Hang on. And for the 27-fold is
17 from this cumulative study.

18 THE WITNESS: From the workers. Actual
19 mesotheliomas compared to an unexposed group --

20 THE COURT: Well, you just got done saying
21 there was no such thing as an unexposed group. The
22 average group.

23 THE WITNESS: You're right. So it's probably
24 higher. The actual -- but it is what we have. You work
25 with what you've got.

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1 THE COURT: Well, that's what I'm asking you
2 for. So the definitive study you'd rely on would be
3 this cumulative or study of studies as they sometimes
4 say.

5 THE WITNESS: Yeah.

6 THE COURT: And that study is what? The name
7 of that study is?

8 THE WITNESS: It's the Bourdés.

9 THE COURT: Okay. Bourdés with a "B"?

10 THE WITNESS: "B." Yeah. B-o-u-r-d--

11 THE COURT: Okay. And that study says 27-fold
12 risk, meaning 27 times more likely than the general
13 population --

14 THE WITNESS: Yes.

15 THE COURT: -- for someone who has worked how
16 long in the plant?

17 THE WITNESS: Ever work in the plant.

18 THE COURT: Ever.

19 THE WITNESS: Yeah.

20 THE COURT: Even for a short period of time.

21 THE WITNESS: It's everybody who worked in the
22 plant. It's -- yeah.

23 THE COURT: All right. Compared to a ten-fold
24 risk for someone who never worked in the plant.

25 THE WITNESS: And lived in the community,
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1 within 2,000 meters.

2 THE COURT: 2,000 meters being?

3 THE WITNESS: 1.2 miles. That's where I got
4 the 1.2.

5 THE COURT: I get it.

6 THE WITNESS: The European studies all do it
7 like that.

8 THE COURT: I got it. I just want you to stay
9 with me. And that's ten-fold for what period of time?
10 Any period they lived there, any time in their lives?

11 THE WITNESS: When they lived one or more
12 years.

13 THE COURT: One or more years.

14 THE WITNESS: Many of them lived there far
15 longer.

16 THE COURT: So based on that, it's your opinion
17 that there's roughly a one-third contribution of risk --

18 THE WITNESS: Yes.

19 THE COURT: -- between nonoccupational and
20 occupational.

21 THE WITNESS: Right.

22 THE COURT: So another way, you would be two
23 times more likely if you worked there than if you
24 didn't.

25 THE WITNESS: Three times more likely.
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1 THE COURT: Three times --

2 THE WITNESS: Yeah.

3 THE COURT: -- because it's 27 versus 10.

4 THE WITNESS: Yeah.

5 THE COURT: No. But you're right.

6 THE WITNESS: Well, I mean all of this is -- I
7 mean you can choice what you want and what I use is what
8 I --

9 THE COURT: That's what I'm getting at is
10 because you earlier testified that in a population of a
11 million, occupational would be between 1,000 and 100,000
12 per million, which is 1 to 10 percent. And for
13 nonoccupational, it would be 4 --

14 THE WITNESS: Yeah.

15 THE COURT: -- million which is .0004 percent.
16 That testimony and what you've just told me from the
17 study are completely diametrically opposed.

18 THE WITNESS: They're different approaches.
19 It's a different -- I mean the one in a million is a
20 population of a million people.

21 THE COURT: Right.

22 THE WITNESS: Where the 10 percent is if you
23 look at a specific population, when they die not
24 everybody -- I mean mesothelioma is a very -- that's the
25 one in a million. It's a very rare disease. You only

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1 have 80 deaths in Wisconsin a year --

2 THE COURT: I get it. Let me try one more
3 time.

4 THE WITNESS: -- out of 20,000.

5 THE COURT: If you were presented with a
6 patient with mesothelioma, your testimony is that you
7 would -- the odds are one in three that they didn't ever
8 -- that they never worked in a plant. That's just
9 unbelievable to me. They never worked in a plant where
10 they were exposed. But that's what you testified to.

11 THE WITNESS: Well, what I'm saying is of -- if
12 you have people with mesothelioma --

13 THE COURT: Yes, sir.

14 THE WITNESS: -- 80 percent of them will have
15 an identified asbestos exposure of one of these three
16 categories. Others of them --

17 THE COURT: No, I get it.

18 THE WITNESS: -- won't remember whether they
19 were exposed or not or don't know.

20 THE COURT: Right. Understood. So certainly
21 if you were a bookie in Vegas, and I don't mean to
22 minimize the seriousness of this case to that end.

23 THE WITNESS: No, I understand.

24 THE COURT: But if you were, the highest
25 that -- you would give the worst odds to those who

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1 worked in the plant --

2 THE WITNESS: Yes.

3 THE COURT: -- as the cause.

4 THE WITNESS: Yes.

5 THE COURT: But you would still think there was
6 a substantial chance that they never worked in the plant
7 but were rather exposed nonoccupationally.

8 THE WITNESS: Yes.

9 THE COURT: And for that proposition you're
10 relying on the Brody study.

11 THE WITNESS: That's how I'm coming up with the
12 proportion to attribute between it.

13 THE COURT: All right. I apologize, Counsel.
14 You may proceed.

15 MR. FINCH: Okay.

16 BY MR. FINCH:

17 Q The Judge's questions were all about risk. Once
18 somebody has the disease and you're looking back at
19 cause, can you explain how that differs?

20 A Well, once you have the disease like --

21 THE COURT: I think I remember in statistics,
22 it's the buyer's -- is it buyer's risk? Buyer's study?
23 The statistical difference between an actual result
24 versus the general risk. That's what you're really
25 talking about. The statistics are very different for
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1 the two.

2 THE WITNESS: Yes. I mean it's -- and if you
3 have the disease and the disease is only caused by one
4 thing, it's -- that's a likely cause of that thing.
5 It's mesothelioma. So even a brief exposure --

6 THE COURT: Was probably the cause.

7 THE WITNESS: Yeah. I mean more likely than
8 not. Without even knowing if there's an exposure, you
9 would bet -- your bookie bet would be -- you'd say I --
10 call on the phone and somebody says I have a relative
11 with mesothelioma. I would say I will bet that person
12 was exposed to asbestos.

13 THE COURT: Right.

14 THE WITNESS: And then you'd have to hunt to
15 find what it is.

16 THE COURT: And the only difficulty I'm having
17 is with your arriving at the odds you do. For example,
18 here we have the combined effects, but where we know
19 there is no exposure to occupational effects, we're
20 seeing a substantially -- and I realize that I'm mixing
21 the two and I'm just having trouble measuring the
22 combined effect. But if we take a population with
23 mesothelioma present, we know for the population as a
24 whole it's far greater likelihood that it was a result
25 of an occupational exposure. We know nothing else.

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1 THE WITNESS: Yeah. I mean most of them have
2 had an occupational exposure. But I mean part of the
3 further complication here is your risk of developing
4 disease is --

5 THE COURT: Low.

6 THE WITNESS: -- very low to start with, but
7 it's proportional or cumulative. So if all you have is
8 the occupational component, you're going to have fewer
9 people develop disease than if you have occupational and
10 you include community and you include the household or
11 the exposures.

12 THE COURT: We just don't know how much more or
13 less.

14 THE WITNESS: Yeah, how much. And my expert
15 judgment is what I gave you as to how I would look at
16 apportioning it. Now, you can adjust that other ways,
17 but I like to use it based on some of the literature and
18 the literature that includes the appropriate numbers in
19 each of them.

20 THE COURT: All right. I'm truly done. Go
21 ahead.

22 BY MR. FINCH:

23 Q Okay. But the relative apportionment you were
24 talking about, you were using epidemiology to try to
25 come to some kind of apportionment in an individual

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1 person. Is that sort of what you're doing?

2 A Yes. It's a qualitative.

3 Q It's a qualitative analysis. Now, explain briefly
4 what is individual susceptibility and how that plays
5 into the causation of mesothelioma.

6 A Well, we don't know whether some people are more
7 susceptible to it because of their genetics: Could be
8 their work practices; could be how fast they breathe;
9 whether they're a mouth breather or a nose breather. So
10 there's all sort of factors that go into how careful you
11 are and where you work in the environment.

12 Q Okay. Now, I want -- and am I correct that an
13 individual's susceptibility, your likelihood of getting
14 disease, getting exposure, that's something that's not
15 just specific to asbestos or mesothelioma, that cuts
16 across all kinds of diseases.

17 A Right. It's everything.

18 Q That's why a lot of people who smoke two packs of
19 cigarettes a day never get lung cancer.

20 A Yes.

21 Q Okay. Now, I want to try to get to the interplay
22 between the Judge's questions about population-based
23 risk and in an individual person. So am I correct that
24 this chart shows generally the greater the type of
25 exposure or the different type of exposure, the greater

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1 the risk? Explain this chart that you and I put
2 together, Dr. Anderson.

3 A Yes. This is a qualitative comparison, again, what
4 we talked about --

5 THE COURT: Just so we're clear, this is not a
6 relation that you're testifying to, so it's not a
7 straight line increase with each of these exposures.

8 THE WITNESS: No.

9 THE COURT: But you're saying that exposure
10 rises with more exposure.

11 THE WITNESS: Right.

12 THE COURT: Or I should say the likelihood of
13 causation, the likelihood of the disease rises with
14 greater exposure.

15 THE WITNESS: Yes.

16 THE COURT: Next question, Counsel.

17 MR. FINCH: Okay.

18 BY MR. FINCH:

19 Q And am I correct that each of those different types
20 of exposure: Environmental exposure, household
21 exposure, occupational-bystander exposure,
22 occupational-user exposure, each of those -- if you're
23 presented with a patient and that's all they had, you
24 would say that is an asbestos-related mesothelioma.

25 A Yes.

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1 Q Each of those --

2 A Again, it would depend on how long. But yes.

3 THE COURT: It's more likely than not.

4 Q More likely than not.

5 A There. There you got it.

6 Q Okay. Now, can you explain to the Judge what is
7 the significance in terms of latency and in terms of
8 likelihood of getting disease of additional asbestos
9 exposure?

10 MS. ELLIS: Your Honor, I want to object to
11 this because, one, we weren't provided with this; two, I
12 don't know what the foundation is.

13 THE COURT: I don't know what this is. It's
14 just a demonstrative. It has no mathematical accuracy.
15 He's just showing relative exposure. If you're
16 objecting that it's not part of his report, I'd listen
17 to that.

18 MS. ELLIS: That is accurate.

19 THE COURT: But he is actually just talking
20 about -- I think his expression was severity of
21 exposure, so -- which it is something that was in his
22 report. So I'm going to let him testify.

23 BY MR. FINCH:

24 Q Could you explain how the severity of increasing
25 exposure affects latency and likelihood of getting

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1 disease, which is what this chart is about?

2 A The greater the exposure -- a latency is the period
3 of time between when you're first exposed when you
4 develop disease. This is a malignancy that has a very
5 long latency, which is why all of the people that
6 develop and die from it are elderly. So the higher the
7 exposure, the shorter the latency. So if you have a
8 very high exposure, your period of time for those types
9 of people, they start to develop their disease at an
10 earlier age or earlier period from onset.

11 Q Okay. Now, let's take it to the case of an
12 individual person and I want you to assume that these
13 are three different people that have mesothelioma and
14 the different colored bars are different sources of
15 exposure that in the literature have been shown that
16 that nature and type of exposure can cause mesothelioma
17 by itself. Can you explain to the Judge how cumulative
18 exposure results in disease in a particular individual?

19 A Well, it's the total exposure so that you can
20 look -- in arriving at the total exposure, you arrive
21 there by asking questions and gathering information
22 about these other exposures that have been shown to be
23 sufficient to cause disease. So you start by doing --
24 medically you do your occupational history, you talk to
25 other relatives, you talk to next-of-kin, you talk to --

HENRY ANDERSON - REDIRECT

1 or you get information from co-workers because people
2 often don't know whether they've been exposed or not.
3 And then that's how you arrive at your total exposure.

4 Q Okay. Now, I want you to assume that this person
5 in the middle -- my laser pointer doesn't seem to work
6 -- is Mr. Boyer. Mr. Boyer someone who had occupational
7 exposure, household exposure, and community exposure; is
8 that correct?

9 A Yes.

10 Q Okay. And I think -- maybe we haven't clearly
11 defined it.

12 THE COURT: I think this is really starting at
13 a very low level and you don't -- I understand --

14 MR. FINCH: Okay. Fine.

15 THE COURT: -- what he has testified to. I
16 understand his report, his expert report. There's
17 nothing mysterious about it. It's straightforward, as
18 is this combination. So maybe you could go from there
19 to something that --

20 MR. FINCH: Sure.

21 BY MR. FINCH:

22 Q My question is for Mr. Boyer, if you were to --
23 let's say the occupational exposure is blue, the
24 household exposure is red and the exposure from living
25 in the community is yellow. If you were to eliminate

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1 one of those exposures from his life, could you still
2 say that it would be more likely or not he would have
3 developed mesothelioma when he did?

4 A Yes.

5 Q What would you --

6 A Oh, no. It might have -- now when he did --

7 Q Yes.

8 A -- would have probably changed. It might well have
9 changed, I can't tell you how much.

10 Q And he might not have gotten the disease at all.

11 A He might not have gotten the disease because the
12 risk is somewhat lower if you had lower total exposure.

13 Q Once someone has the disease, is there any way
14 scientifically that you know of that you can say okay, I
15 can back out some significant component of his exposure
16 and still say it was -- that he would have developed the
17 disease?

18 A No.

19 Q Do you need a quantitative measurement or estimate
20 of any subcomponent exposure as long as they are the
21 nature and type of exposure that has been shown in
22 literature to cause mesothelioma?

23 A No.

24 Q The Helsinki criteria is something that we talked
25 about in our papers, but I don't think we've had a

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1 witness explain it. Can you just explain what the
2 Helsinki criteria is and how you use it to analyze
3 exposure in the cases here from mesothelioma?

4 A This is a consensus report, an international group,
5 a large group of experts that got together to come up
6 with statements that, as you were talking, for
7 clinicians and others to use in evaluating exposures,
8 and they're summarizing in fairly clear terms the
9 literature and the experience up to that point.

10 Q And are these the key takeaway points from the
11 Helsinki criteria: The history of significant
12 occupational, domestic or environmental exposure to
13 asbestos will sufficient for attribution?

14 A Yes.

15 Q And do you apply that to each of the types of
16 exposures in somebody's life to say whether it's a
17 substantial or significant exposure to them?

18 A Yes.

19 Q And was the Helsinki criteria consensus document
20 something the work of scientists from around the world
21 who published it first in 1997?

22 A Yes.

23 Q And it was updated and essentially the criteria
24 reconfirmed and republished in 2014?

25 A Yes.

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1 Q And you regard that as reliable and authoritative
2 in a medically sound way to assess causation in
3 mesothelioma cases?

4 A Yes.

5 Q Okay. Are you familiar with a textbook called *Dail*
6 & *Hammar's Pulmonary Pathology*?

7 A Yes.

8 Q Do you regard that as reliable and authoritative on
9 the question is cumulative exposure-causing disease a
10 question?

11 MS. ELLIS: Your Honor, I'm going to object to
12 this because this was not cited in his report or
13 discussed at all.

14 THE COURT: Counsel.

15 MR. FINCH: Your Honor, it wasn't cited in his
16 report, but it is a piece of medical literature he's
17 aware of; he can testify is reliable and authoritative.
18 It's supportive --

19 THE COURT: If it wasn't in his report or in
20 his supplemental report, he's not testifying about it.
21 So that's easy.

22 MR. FINCH: Can I lay a foundation that it is
23 reliability and authoritative? This is -- for purposes
24 of a Daubert hearing if this is a hearing that's
25 conducted under Rule of Evidence 104, sources beyond

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1 what the expert has in their report can be considered by
2 the court to assess the reliability.

3 THE COURT: I'll hear it for that reason.

4 MR. FINCH: You will do that?

5 THE COURT: Yes.

6 MR. FINCH: Thank you, Your Honor.

7 BY MR. FINCH:

8 Q You're familiar with this textbook, Doctor?

9 A Yes.

10 Q Okay. So you're not going to obviously --

11 THE COURT: Before we go to that textbook, does
12 the Helsinki study say that nonoccupational exposure is
13 sufficient -- at whatever level, is sufficient to assume
14 cause?

15 THE WITNESS: Yes.

16 THE COURT: Because I didn't see that in the
17 quote. Is that somewhere else in the --

18 MR. FINCH: It's in the Helsinki document.

19 THE COURT: But not the one you pulled up.

20 MR. FINCH: What it says is that "A history of
21 significant occupational, domestic or environmental..."
22 domestic is --

23 BY MR. FINCH:

24 Q Doctor, is domestic another word for household?

25 A Yes.

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1 Q And is environmental another word for neighborhood
2 exposure?

3 A Yes.

4 MS. ELLIS: Your Honor, I'm going to object to
5 leading and for counsel explaining the paper as opposed
6 to having the doctor testify.

7 THE COURT: Well, I'll sustain the objection,
8 although this is not for purposes of -- I mean I'm going
9 to allow some leeway given the nature of the Daubert
10 hearing. Having said that, looking at those two
11 statements, the first one says an occupational history
12 of brief or low-level exposure is sufficient, but the
13 next one says a history of significant occupational,
14 domestic or environmental exposure. So Helsinki
15 distinguishes between brief or low-level occupational
16 history, which is contrary to what you said which is
17 that even a short occupational exposure is apparently
18 sufficient, but you have to show a history of
19 significant occupational -- of domestic or environmental
20 exposure to make the same attribution.

21 BY MR. FINCH:

22 Q What does significant mean?

23 A I mean they don't define what significant is, but
24 it's a period of time. More than one day.

25 THE COURT: It must be different than brief or
HENRY ANDERSON - REDIRECT

1 low-level exposure; right? There's a difference in what
2 Helsinki says.

3 THE WITNESS: I would say no.

4 THE COURT: So you're not relying on the
5 Helsinki --

6 THE WITNESS: I'm relying on this and it's how
7 you interpret and parse what they're saying.

8 THE COURT: That's what I'm being asked to do.
9 I'm being asked to find if there's any scientific data
10 behind your opinion and I'm concerned that you're not
11 recognizing in your own paper, the one you rely on, the
12 distinction between even a brief or low-level
13 occupational history versus a low or brief or low-level
14 exposure, domestic or environmental. In other words,
15 one allows the assumption and the other doesn't. That's
16 what that's saying, isn't it?

17 THE WITNESS: I don't interpret it that way. I
18 mean the key is you have to consider it to be -- I mean
19 a significant occupational is brief or low level or
20 whatever, or it can be a significant domestic or
21 environmental exposure. And it's --

22 THE COURT: So in other words --

23 THE WITNESS: -- up to the clinician or the
24 expert to decide is it a significant exposure.

25 THE COURT: In other words, in order to find or
HENRY ANDERSON - REDIRECT

1 to attribute an exposure of asbestos being the cause or
2 being an attributable factor for the mesothelioma, you
3 would have to have a significant exposure, domestic or
4 environmental.

5 THE WITNESS: Yeah.

6 THE COURT: Whereas you only need brief or
7 low-level exposure in your occupation.

8 THE WITNESS: But that's considered
9 significant.

10 THE COURT: Right.

11 THE WITNESS: I mean so --

12 THE COURT: No, no, no, Doctor. Either you
13 agree or you disagree with my statement that for
14 domestic and environmental exposure, you need to have a
15 significant exposure in order to attribute to -- in
16 order to be attributed to the resulting mesothelioma,
17 whereas an occupational history need only be brief and
18 low level. You agree with that statement or at least
19 you agree there's what the Helsinki consensus says.

20 THE WITNESS: I would say these are linked.
21 The first one defines a significant occupational
22 exposure. The second one says once you've determined
23 it's a significant -- I mean it says significant
24 occupational --

25 THE COURT: All right. Does it anywhere --
HENRY ANDERSON - REDIRECT

1 THE WITNESS: -- which is not different from a
2 brief or low-level exposure.

3 MR. FINCH: Your Honor, I think it would be
4 actually helpful to actually highlight the two sections
5 of the -- okay.

6 BY MR. FINCH:

7 Q Doctor, is this the portion of the Helsinki
8 criteria that says "in the absence of markers," and
9 markers they're talking about pleural plaques or
10 asbestosis?

11 A Yes.

12 Q And then it says "a history of significant
13 occupational, domestic or environmental exposure to
14 asbestos will suffice for attribution." That's the
15 point we were just talking about; right?

16 A Yes.

17 Q Okay. Then further on down here, does it talk
18 about the level or nature of type of asbestos exposure
19 in the further text? What does it say under
20 mesothelioma can occur?

21 A Well, the lowest asbestos exposure. However --

22 Q Then what does it say about however?

23 A And then it says "very low background.
24 Environmental exposures have only an extremely low
25 risk."

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1 Q Okay. If you were presented with a patient with
2 mesothelioma and the only asbestos exposure they had in
3 their life was an environmental asbestos exposure living
4 within a mile of a factory or plant, would you -- under
5 the Helsinki criteria would you determine that was an
6 asbestos-related mesothelioma?

7 A Yes.

8 Q Okay.

9 MR. FINCH: And then the second quote, Your
10 Honor, is "the occupational history of brief or
11 low-level exposure should be considered sufficient for
12 mesothelioma to be designated as occupationally
13 related."

14 Q Is that the second point we were talking about on
15 the bigger call out?

16 A Yes. The other two wouldn't be considered
17 occupational.

18 Q Okay. And am I correct that both -- am I correct
19 that it's the breathing the asbestos that causes the
20 disease, not what your job title is?

21 A Yes.

22 Q Okay. And am I correct that the medical literature
23 where people have gotten mesothelioma after a day of
24 exposure weren't in those cases -- for example, in
25 Greenberg/Davies, wasn't that somebody sawing up

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1 asbestos sheets at their house?

2 A Yes.

3 Q And so that wasn't their job to do that, they were
4 doing that in their side -- in their spare time; right?

5 A Yes.

6 Q Okay. And back to this cumulative exposure point.
7 We were -- His Honor had, for purposes of the record,
8 allowed me to talk with you a little bit about Dail &
9 Hammar. This is a widely used pulmonary pathology
10 textbook?

11 A Yes.

12 Q And you regard it as reliable and authoritative on
13 the question of mesothelioma causation?

14 A Yes.

15 Q What does Dail & Hammar tell us about the threshold
16 level of exposure to asbestos that is necessary to cause
17 mesothelioma?

18 A Basically that there hasn't been a lower threshold.
19 There's no threshold for the risk.

20 Q And what does Dail & Hammar tell us about when
21 there are multiple asbestos exposures, how those relate
22 to causation of mesothelioma?

23 A They each contribute to the cumulative exposure.

24 Q One factor that emerges from the Peto model and its
25 modifications is that when there are multiple asbestos

HENRY ANDERSON - REDIRECT

1 exposures, each contributes to cumulative exposure and
2 hence to the risk and causation of malignant
3 mesothelioma within an appropriate latency interval?

4 A Yes.

5 Q Now, you were asked some questions about -- they
6 had a chart that had the studies out of the Bourdés
7 paper. B-o-r-d-e-s. You were asked some questions
8 about those studies and why they were or were not
9 comparable. Do you recall that?

10 A Yes.

11 Q Okay. In your work here for the Marshfield case,
12 did you use Mr. Parker's report about the sources of
13 asbestos emissions into the community, the historical
14 measurements, the fugitive emissions, did you use that
15 as a basis to establish that the Marshfield plant was a
16 point source for asbestos emissions in the same type of
17 way that a factory or a plant or a mine that had been
18 studied in the literature was a point source for
19 emissions?

20 MS. ELLIS: Your Honor, I'm objecting to the
21 leading nature of this about what the witness did.

22 THE COURT: I'll treat it as preliminary. It's
23 a yes or no question. You can ask your next question.

24 THE WITNESS: Yes.

25 BY MR. FINCH:

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1 Q Okay. Why did you find the studies to be -- the
2 studies that you relied upon in the Bourdés analysis to
3 be comparable to Marshfield? And can you explain to the
4 Judge how you relied upon them?

5 A I think it was because the plant is a manufacturing
6 facility for making an asbestos product. They were
7 importing, bringing in raw asbestos. The other plants
8 or the mines focused on raw asbestos. And I think the
9 key thing in the Marshfield is we have the description
10 of the very -- the dust being released, the fugitive
11 emissions. All that information that in many of these
12 other reports you don't see them, but there's all the
13 complaints about dust, the plants are releasing dust
14 into the community.

15 Q What's the significance of visible dust when it
16 relates to asbestos?

17 A It means that there's an excessive amount of
18 asbestos in the air.

19 Q Do any of the published epidemiology studies that
20 deal with community exposures to asbestos or even
21 household exposures to asbestos, do they routinely
22 report on in-house fiber types or the level of exposure
23 in the house?

24 A No.

25 Q And yet you, as a medical doctor and an
HENRY ANDERSON - REDIRECT

1 epidemiologist, rely on them in the normal course of
2 your work outside of the courtroom to help you
3 understand asbestos disease causation?

4 A Yes.

5 Q We've been talking a lot about community exposure,
6 which is somebody living in the neighborhood. But how
7 do you -- what studies have you done specifically on the
8 concept of household exposure? By that I mean once the
9 dust gets into the house from whatever vector, whether
10 it's a worker bringing it home on the clothes or coming
11 in through the air, what studies have you done in your
12 career that are relevant to that?

13 A We studied the family members of workers in the New
14 Jersey plant doing chest x-rays, clinical exams, and
15 interviews on them and that's where we -- in that group,
16 we found four mesotheliomas in family members. But we
17 also found a lot of pleural plaques, 35 percent of them,
18 40 years after they were living in the household had
19 developed disease.

20 Q What is the significance of finding pleural plaques
21 and asbestosis in that kind of environment?

22 A That's another marker of asbestos exposure.
23 Finding actual asbestosis also is a marker there was
24 some very substantial exposure.

25 Q And does that type, nature and level of exposure
HENRY ANDERSON - REDIRECT

1 mean that that kind of environment can cause
2 mesothelioma?

3 A Yes.

4 Q What does that tell you as it relates to the lung
5 cancer cases, the fact that you found that there was --
6 that household members who were exposed to asbestos
7 through other people bringing it into the house
8 developed asbestosis or pleural disease, how does that
9 relate to your opinions about the two lung cancer cases
10 here?

11 A Well, actually in our study we did find an excess
12 of lung cancer in family members as well; found out over
13 the years of that, along with the mesotheliomas. But
14 what it says is the asbestos exposure contributes and
15 that there is a risk of lung cancer development because
16 there is substantial asbestos exposure.

17 Q Okay.

18 A In this -- as I say, in this example in small
19 numbers, we did have a statistical excess of lung cancer
20 in the family members.

21 Q The Judge -- I think he may have asked you this,
22 but if he hasn't -- if he hasn't, I'm sure he will.
23 He's going to ask about --

24 THE COURT: That's quite a preface. Why don't
25 you just ask the question.

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1 Q The smoking. The smoking factor. One or two of
2 the -- there were two lung cancer cases and they were
3 former smokers for some period of time. Is there
4 epidemiology that shows the interplay between cigarette
5 smoking and asbestos exposure and lung cancer disease?

6 A Yes.

7 Q And what does that literature generally show us?

8 A Generally it shows that by itself, asbestos
9 increases the risk of lung cancer roughly a factor of
10 five and that the two do interact in a additive, little
11 bit more than an additive relationship.

12 THE COURT: I don't know what that means, a
13 little bit more.

14 THE WITNESS: Well, it's between -- just
15 summing it up. Like the cumulative exposure of asbestos
16 you just sum them up, one plus one is two. Here with
17 lung cancers, the risk of asbestos plus tobacco is
18 greater than one plus one, but it's a little less than
19 the two multiply each other. Early literature showed
20 that the two multiplied. So cigarettes by themselves,
21 you have a ten-fold increase in lung cancer. Asbestos
22 by itself five-fold. Early studies suggested the
23 combined risk was 50 rather than 15. So now it's a
24 little bit closer to the 15 than it is to the 50.

25 BY MR. FINCH:

HENRY ANDERSON - REDIRECT

1 Q And --

2 A If you stop smoking, the risk goes down.

3 Q And if you have someone who smoked and also had
4 asbestos exposure, is it possible to -- in a person that
5 has lung cancer, is it possible to say that the asbestos
6 exposure made no contribution to the disease?

7 A No.

8 Q You were asked some questions about the information
9 that you had when you wrote your 2013 report for a case
10 called Treutel. Do you recall those questions?

11 A Yes.

12 MR. FINCH: Your Honor, may I --

13 THE COURT: You may approach. But while you're
14 doing that, there is a mention of the pleural plaques in
15 the lung cancer of Heckel or Prust or in those cases?

16 THE WITNESS: Yes.

17 THE COURT: Was there -- would the pleural
18 plaques be or can the pleural plaques be present whether
19 or not there was an asbestos exposure?

20 THE WITNESS: The kind that we're seeing,
21 again, more likely than not are asbestos related. But
22 yes, you can get pleural plaques if you had a gunshot
23 wound or you had severe tuberculosis. But there's no
24 clinical indication to explain them as caused by
25 something else.

HENRY ANDERSON - REDIRECT

1 THE COURT: Is there a link between pleural
2 plaques or greater likelihood of contracting lung cancer
3 with pleural plaques when you smoke cigarettes than if
4 you don't smoke cigarettes?

5 THE WITNESS: I don't think there's --
6 cigarettes don't contribute to the pleural plaques.

7 THE COURT: Next question, Counsel.

8 BY MR. FINCH:

9 Q I'm not sure I -- if someone has pleural plaques,
10 they had an increased risk of lung cancer as opposed to
11 someone who doesn't if they both smoke.

12 A Yes.

13 Q Okay. All right.

14 MR. FINCH: Now may I approach the witness?

15 THE COURT: You may.

16 BY MR. FINCH:

17 Q You were asked some questions about a 2015 report
18 from --

19 THE COURT: I assume counsel was provided this
20 already?

21 MR. FINCH: Yes, yes. They have the 2015
22 report.

23 Q This is an update report on Mr. -- on Mrs. Treutel;
24 is that right?

25 A Yes.

HENRY ANDERSON - REDIRECT

1 Q All right. When you did your original report, did
2 you have conversations with the lawyers from the Casino
3 Vaughn firm where you learned generally about the nature
4 of the exposures in the Marshfield area?

5 A Yes.

6 Q Okay. But then when you did your update report,
7 which is the report that's at issue here, did you go
8 through and summarize the various information that you
9 had been provided with in the first page of the report?

10 MS. ELLIS: Your Honor, I'm objecting to this
11 as leading and he's not asking the doctor what he
12 actually did and he's leading him into it. The doctor
13 has already testified that he did --

14 THE COURT: I'm just -- for purposes of this
15 hearing, it's preliminary to the question that I assume
16 he's next going to ask.

17 MR. FINCH: Yes.

18 BY MR. FINCH:

19 Q Doctor, did -- does this report set forth the
20 facts, data, and assumptions considered in formulating
21 your report on page one?

22 A Yes.

23 Q Okay. And among the materials are a list of Rita
24 Treutel's worksites, exposure summary, community map
25 provided by the Casino Vaughn law offices?

HENRY ANDERSON - REDIRECT

1 A Yes.

2 Q CD containing all case-specific materials?

3 A Yes.

4 Q That would include things like interrogatory
5 answers and then Mr. Parker's report?

6 A Yes.

7 THE COURT: Is it your testimony that you
8 relied on all of those things when you first expressed
9 your opinion but didn't list them?

10 THE WITNESS: They weren't available at the
11 first time.

12 THE COURT: Okay. I understand. Next
13 question.

14 BY MR. FINCH:

15 Q So is fair to say you had a general understanding
16 at the time you did your first report, but you got much
17 more specific information for your final report?

18 A Yes.

19 Q Okay.

20 MR. FINCH: Your Honor, I don't have any
21 further questions of the witness unless Your Honor has
22 some more that we need to follow up with. (11:55 a.m.)

23 THE COURT: I do not. We should then turn to
24 Mr. --

25 MR. FINCH: Parker?
HENRY ANDERSON - REDIRECT

1 THE COURT: -- Parker, yes.

2 MS. ELLIS: Your Honor, any chance you would
3 give me a moment to have a brief reexamination of the
4 witness to follow up on a few points?

5 THE COURT: It's going to have to be really
6 brief and it's going to have to be very specific.

7 MS. ELLIS: Okay.

8 THE COURT: But I'll give you a few minutes.

9 MS. ELLIS: Before I actually address the
10 witness, Your Honor, I wanted to say we do have a motion
11 before the Court.

12 THE COURT: With respect to striking this later
13 report.

14 MS. ELLIS: Yes, Your Honor.

15 THE COURT: I'm aware of that motion.

16 MS. ELLIS: Okay. Thank you, Your Honor.

17 RECROSS-EXAMINATION

18 BY MS. ELLIS:

19 Q I want to touch on, Dr. Anderson, the formula or
20 calculation that you've talked about with the Court and
21 counsel just now and the relationship between the risks
22 that you used to create them on. And that relationship
23 actually came out of one of the Italian studies; right?

24 A Yes.

25 Q Okay. It didn't come out of the Bourdés study;
HENRY ANDERSON - RECROSS

1 right? It came out of Maule from 2007; right?

2 A The Bourdés study I used to say that the household
3 risk was very similar or was -- I used the same risk for
4 household as for community because those two summary
5 figures were the same. I used the occupation to
6 community exposure from the Maule paper.

7 Q So you took the occupational risk and the community
8 risk from the Italian paper; right?

9 A Yes.

10 Q And you disregarded the household risk that was
11 reported in the Italian paper; right?

12 A I don't think it was in the same paper.

13 Q All right. We've got it right here. We'll take a
14 look. And I'll represent to you that the household risk
15 was 1.4 for the household contacts with regard to the
16 same plant and I've got that circled for you right
17 there; right?

18 A Yeah.

19 Q Okay. So you have 27.5 times risk for the
20 employees?

21 A After it had been adjusted to remove the community
22 exposure.

23 Q Right. 10-and-a-half for the community piece;
24 right? Risk.

25 A Right.

HENRY ANDERSON - RECROSS

1 Q And then a 1.4 for the household piece.

2 A Right.

3 Q And like we said, you discarded the 1.4; right?

4 A I thought the summary of all of the studies was a
5 better estimate for all the various community
6 exposures --

7 Q So you went to --

8 A -- for the household.

9 Q Okay. Pardon me. You went to the Bourdés study,
10 which is the meta analysis; right?

11 A Yes.

12 Q And the household risk in Bourdés from the summary
13 of that paper, and we have that up here, was 8.1; right?

14 A Yes.

15 Q And the summary risk for environmental from this
16 paper was 7; right?

17 A Right.

18 Q So several -- lower than the 10-and-a-half that was
19 found in the Italian study; right?

20 A Right.

21 Q Okay. But you didn't use the 7 that was reported
22 in Bourdés, right, for the environmental?

23 A No. Because you needed to have -- they don't have
24 a figure for all of the occupational groups.

25 Q Okay. But --

HENRY ANDERSON - RECROSS

1 A So I mean you can't get -- the 27, you can't get
2 from here. And in some of these 27, it's much lower if
3 you actually look -- some actually the occupation is
4 only 6.

5 Q But we're not talking about the occupational piece,
6 we're talking about the environmental piece. So the 27
7 occupational you got from the Italian study and you took
8 the 10-and-a-half environmental from the Italian study;
9 right?

10 A Yes.

11 Q There is a 7 in this paper for the environmental
12 risk; right?

13 A Yes.

14 Q You didn't use that one; right?

15 A No.

16 Q And this paper says the risk for household is 8.1;
17 right?

18 A Right.

19 Q You likewise didn't use that one, did you?

20 A I used this to say -- if you look at the range --
21 you can go and look at -- go to the summary. If you put
22 up the --

23 THE COURT: It's all right. You've answered
24 the question.

25 THE WITNESS: It's --
HENRY ANDERSON - RECROSS

1 THE COURT: Next question.

2 THE WITNESS: I had a range of values and this
3 is the central value.

4 BY MS. ELLIS:

5 Q I understand.

6 A So I'm saying the central value, the two are
7 relatively comparable. But the range is quite different
8 in the various studies. They used the 27, I had to use
9 the figure from that study.

10 Q And you --

11 A That's the epidemiological approach.

12 Q And you used 10-and-a-half for environmental and
13 then you plugged in a 10-and-a-half for the household is
14 my point; right?

15 A I said from the Bourdés study, the two appeared to
16 be very similar. 8 versus 7. And actually 10 isn't
17 that much different from the 8 or 7.

18 Q Well, it is different when you're talking about
19 your risk, your probability for developing a disease.
20 It's about a third of a difference; right?

21 A Eight percent --

22 THE COURT: We've spent as much time as I care
23 to on this question. Anything more?

24 MS. ELLIS: Okay. No, Your Honor. Not on that
25 point.

HENRY ANDERSON - RECROSS

1 BY MS. ELLIS:

2 Q I guess I'll just ask this question: Is there any
3 published study or source that we could go look to that
4 would describe the methodology you used here to take the
5 different risks from the different studies and create
6 your formula?

7 A I think that's basically what these various study
8 did when they subtract out and they do the comparative
9 risk numbers and they talk about the household having
10 this risk compared to the others, and that's basically
11 what I did. And that's a comparative risk model.

12 Q Which study did what you did by taking different
13 risks from different papers and then creating a formula
14 from them?

15 A The numbers are there.

16 Q That's not my question.

17 A But I'm saying --

18 THE COURT: And at this point it's rhetorical.
19 You've made your point, Counsel.

20 MS. ELLIS: Okay.

21 THE COURT: We'll then excuse you, Doctor.
22 Thank you for your time today.

23 THE WITNESS: Thank you.

24 THE COURT: And you're free to leave at this
25 point.

HENRY ANDERSON - RECROSS

1 (Witness excused at 12:00 p.m.)

2 THE COURT: I would ask that Mr. Parker come
3 forward for cross-examination. While he's doing that,
4 let me just be clear for plaintiff that I will expect
5 among your exhibits the Brody study, the Helsinki, the
6 Dail & Hammar chapter, the Anderson study, and the Maule
7 study. If you want to simply designate where in the
8 docket I can find them, that's fine as well. But I
9 expect those to be among your numbered exhibits.

10 MR. FINCH: Okay. Some of those we have here,
11 Your Honor, but some of them may have to get printed or
12 sent to you electronically. Is that okay -- if we give
13 them to you by the end of the day, is that okay?

14 THE COURT: Yeah. I just want to make sure
15 they're part of the record and at the end of the day
16 tomorrow is fine as long as --

17 MR. FINCH: As long as you have it --

18 THE COURT: Here is what I would ask: I would
19 ask both sides to exchange their lists; see if you can
20 agree. If you can, then just provide them to me. If
21 you can't, then try to let me know before we close the
22 hearing today.

23 MR. FINCH: Can I just -- I've got four of the
24 six. I've got Helsinki, Dail & Hammar --

25 THE COURT: We'll go over this. I don't want
HENRY ANDERSON - RECROSS

1 to keep Mr. Parker any further. You may stand to be
2 sworn.

3 **FRANK PARKER, PLAINTIFFS' WITNESS, SWORN,**

4 THE COURT: Please be seated. And let me just
5 say that I hope this will not be a cross-examination as
6 you might do at trial. In particular, I hope we don't
7 spend a lot of time on what this witness did not do but
8 rather explore the weaknesses in what he did do and what
9 he did rely on. I'm not going to preclude you from
10 making the point, but I don't want to spend a lot of
11 time on what he didn't do. To me that's argument you
12 can make and I will give a chance for limited argument
13 at the close of this hearing.

14 You may proceed, Counsel.

15 CROSS-EXAMINATION

16 BY MR. METCALF:

17 Q Mr. Parker, you're not an epidemiologist; right?

18 A That's correct.

19 Q And you're not -- you're not here to offer any
20 opinions on epidemiology; right?

21 A No, other than how it applies to industrial hygiene
22 or is used by industrial hygiene.

23 Q You issued your reports in this case primarily in
24 January of this year; correct?

25 A Yes. I issued an overall review, technical review,
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1 and then a series on each individual.

2 Q And at the time you issued your reports you had not
3 talked to any witnesses; right?

4 A That is correct.

5 Q You never visited the plant either.

6 A That's correct.

7 Q And every one of the plaintiffs in these cases that
8 you've issued an opinion on was an employee at the
9 Weyerhaeuser facility; right?

10 A At least part of their time, that's correct.

11 Q And it's your opinion that each of them received
12 significant exposures to asbestos during their
13 employment; correct?

14 A That's correct.

15 Q You have not done any studies to determine the
16 background levels of asbestos in Wisconsin; correct?

17 A That is correct. But can I explain?

18 THE COURT: You'll be given an opportunity.
19 I'm confident that plaintiffs' counsel will elaborate.
20 Why don't you ask your next question.

21 BY MR. METCALF:

22 Q Putting together your reports in these cases, you
23 did not prepare any models of exposures in plaintiff
24 homes or in the community; right?

25 A That is correct. But I'd like to explain.

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1 THE COURT: It's going to be more efficient if
2 you allow counsel to do it. And I do appreciate your
3 focusing on what's being asked. And so we're clear, I
4 have read your report, your general report. I haven't
5 read each individual opinion for each plaintiff, but you
6 can assume that you've already explained much of how you
7 arrived at your opinions.

8 THE WITNESS: Okay.

9 THE COURT: And you should proceed, Counsel.

10 BY MR. METCALF:

11 Q Is there anything that you can point the Court to
12 in terms of quantifying the actual exposures that you
13 believe took place in Marshfield?

14 A Yes. I think part of my -- my January report
15 includes the appropriate and applicable literature plus
16 what information we have from the plant that provides us
17 a few numbers.

18 THE COURT: Leaving the literature aside, is
19 the principal piece of information specific to exposures
20 in Marshfield as a result of this plant the data that
21 you took from -- we'll call it the Weyerhaeuser plant, I
22 don't know if it was at the time -- the data from that
23 plant in terms of the number of tons of -- I don't think
24 it was asbestos, the number of tons that were being
25 dispersed each day?

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1 THE WITNESS: Well --

2 THE COURT: In other words, let me ask a better
3 question. What specifically did you rely on, if
4 anything, as to data regarding this plant?

5 THE WITNESS: Well, again in my report, the
6 specifics that the testimony gave us, the few
7 measurements we have, the background information on the
8 quantity of asbestos products being processed, the
9 information that we have, pretty poorly, but information
10 we have on some of the ventilation, information we have
11 on the receipt of those, especially the raw asbestos in
12 Drinkhart and how that's offloaded and transported, the
13 information we have on the waste materials being
14 transported off property, there's a few numbers
15 associated with it that they did some studies. There's
16 information talking about -- as Dr. Anderson said,
17 there's information about reports from the neighborhood
18 of visible emissions from the plant.

19 THE COURT: In terms of quantitative as opposed
20 to qualitative descriptions, anything else you relied on
21 on a quantitative basis other than the amount of
22 material being processed out of that plant?

23 THE WITNESS: Quantitative, we do have a few
24 numbers in here.

25 THE COURT: But doesn't that have to do with
FRANK PARKER - CROSS

1 the amount that was being processed? I mean your
2 extrapolation of the tonnage exposure from this plant
3 per day, isn't it from the data that Weyerhaeuser or
4 whoever was running the plant at the time had prepared?
5 Is there any other quantitative information?

6 THE WITNESS: I am not aware of any other
7 quantitative data other than what we got out of
8 Weyerhaeuser.

9 THE COURT: Very good. Thank you. Next
10 question, Counsel.

11 BY MR. METCALF:

12 Q Mr. Parker, you would agree that the processes that
13 went on at that facility changed significantly over the
14 years; correct?

15 A Yes.

16 Q In the early years, the facility was only using
17 cores that came from someone else; correct?

18 A That is correct.

19 Q And starting in 1968 they started to make some of
20 their own cores; correct?

21 A Correct.

22 Q So prior to 1968, raw asbestos would not have been
23 delivered to the facility; correct?

24 A That is correct.

25 Q And you can't --

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1 A But it was delivered as panels which then had to be
2 processed; that's correct.

3 Q All right. And in terms of coming up with a waste
4 factor, an amount of waste, asbestos waste that you
5 believe was given off from the facility, you can't point
6 the Court to any particular study to support that one
7 percent waste factor, can you?

8 A There was no studies at Weyerhaeuser. One percent
9 in my experience and knowledge of industrial processes
10 is a fairly low number.

11 Q But you can't point the Court to any study that you
12 base that on; right?

13 A That is correct. Let me back up. I don't have a
14 published study, but over my years of experience I've
15 seen lots of studies about efficiency in process plants;
16 not in an asbestos door plant, but in other kinds of
17 manufacturing plants and so on. That's what I'm basing
18 that on.

19 Q Can you tell the Court is there anything besides
20 your experience that you draw that one percent from?

21 A Like I said, I don't -- I did not have a published
22 paper on that. I'm not aware of any. Just one percent
23 is an extremely low waste factor for any processing
24 plant.

25 Q But you don't have any literature that you think --
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1 THE COURT: I think he's answered your
2 question, Counsel. Next question.

3 BY MR. METCALF:

4 Q Let's talk for a minute about the sort of bands of
5 exposure around this facility. You did not rely on any
6 industrial hygiene principles to set a distance from the
7 facility within which you think a certain exposure
8 occurred; correct?

9 A Well, I did not attempt to, given the paucity of
10 data we had, I did not attempt to put together a
11 quantitative estimate of concentrations in the community
12 versus distance, that's correct.

13 Q And you would agree that the further you get away
14 from a point source, the lower the concentration of the
15 substance that started that source turns into; right?

16 A Usually. I mean sometimes you can have unique
17 situations like taking this stuff to the dump. That
18 creates a secondary point source. But, yes.

19 Q The further you get away, the lower it generally
20 is; correct?

21 A Unless there's -- yes, unless there's some real
22 reason for it.

23 Q And you've testified that dust can be carried as
24 much as thousands of miles away from the original
25 source; correct?

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1 A Yes, that's actually true.

2 Q And you did nothing from an industrial hygiene
3 perspective to quantify or to establish how far those
4 asbestos particles would have gone from this facility;
5 right?

6 A Correct.

7 Q So they could have stopped at 100 feet; they could
8 have gone to 100 miles, right?

9 A No, they are not -- with this type of plant, you
10 are not going to stop them in 100 feet. I mean their
11 own data even shows they didn't do that.

12 THE COURT: I think the real question is you
13 didn't do it for any period of feet.

14 THE WITNESS: That's correct, I did not do
15 that.

16 BY MR. METCALF:

17 Q You have testified in previous cases similar to
18 this one involving exposure -- community exposures to
19 chemicals and substances; correct?

20 A Correct.

21 Q And in those cases you have done attic dust
22 sampling; correct?

23 A Correct.

24 Q You've also done soil sampling; correct?

25 A Correct.

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1 Q You did it in the Algoma cases that involved a
2 similar fire door facility; right?

3 A Correct.

4 Q And in that case, you indicated that you believe
5 that attic dust samples are a very good way for telling
6 whether a facility emitted asbestos; correct?

7 A Correct. Depending on -- if you have the right
8 houses and the right time frame, those types of things,
9 yes.

10 Q And in the Algoma case, you designed the study to
11 test houses along the route the dump trucks took to the
12 landfill; correct?

13 A Correct.

14 Q And you found asbestos in four of the seven samples
15 taken in that case; right?

16 A That's my recollection, yes.

17 Q And you testified that that supported your opinion
18 that the facility was emitting asbestos dust into the
19 air; correct?

20 A Correct.

21 Q And you testified that if you would have found all
22 seven of those not containing asbestos, then that would
23 have been an indicator to you that there was not an
24 asbestos source in the area; correct?

25 A Correct. Based on the age of the houses and all of
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1 the testimony, that is correct.

2 Q And in this case, we asked you if you had done any
3 attic dust or similar testing in the Marshfield area;
4 correct?

5 A Correct.

6 Q We sent you a subpoena for records like that;
7 right?

8 A Correct.

9 Q And you did not provide any testing to us, did you?

10 A No -- well, we did in deposition eventually.

11 Q But in response to the subpoena, you did not
12 provide any of that.

13 A That's correct.

14 Q And at the deposition when I originally asked you
15 have you -- did you have any testing data, you said no
16 you didn't.

17 A I had not done any testing of this project, that is
18 correct.

19 Q Someone in your office had done that testing;
20 right?

21 A Yes.

22 Q And you were requested by the Casino Vaughn firm to
23 have someone in your office do testing; right?

24 A That's correct.

25 Q And I believe you testified Mr. Tabrizi did that
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1 testing?

2 A Correct.

3 Q And that when he came back from doing the testing
4 and got the results back, he told you that those results
5 were negative; right?

6 A As we talked in my deposition, I don't remember any
7 real discussion about it, but at least I think I got the
8 impression they were negative.

9 Q But you testified at your deposition that he told
10 you the results were negative.

11 A Okay.

12 Q But --

13 THE COURT: Do you have a line?

14 MR. METCALF: Yes, Your Honor. Page 46, line
15 14.

16 THE COURT: Would you have the courtesy of just
17 displaying it to the witness?

18 MR. METCALF: Yes, Your Honor.

19 THE COURT: Thank you. And you can just read
20 the question and answer.

21 MR. METCALF: Question was: "Did you --

22 THE COURT: Are you able to see that blown up?
23 Otherwise right behind you might be --

24 THE WITNESS: No, I can see it over here.

25 THE COURT: That's fine. Go ahead.
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1 BY MR. METCALF:

2 Q "Question: How did you find out that they came
3 back negative for asbestos?"

4 And your answer was: "Mr. Tabrizi told me."

5 A Where are we here?

6 THE COURT: He said line 14.

7 THE WITNESS: Okay. Well, I think it was the
8 first answer up on line one.

9 THE COURT: The question is simply did he
10 accurately read from line 14 through line 16, and this
11 is represented to be page 46, that Mr. Tabrizi told you;
12 in other words, that's what you said at the time of your
13 deposition.

14 THE WITNESS: That is correct.

15 THE COURT: Very good. Next question.

16 BY MR. METCALF:

17 Q You didn't include that in the report that you
18 provided in this case, did you?

19 A No, wasn't part of my study.

20 Q But someone in your office went and did it; right?

21 A Correct.

22 THE COURT: You've already established that.
23 Something more you want to ask regarding it?

24 MR. METCALF: That's fine.

25 BY MR. METCALF:

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1 Q Besides testing those homes and that soil, you
2 never tested any of the plaintiffs' residences; right?

3 A That is correct.

4 THE COURT: Also something you've already
5 established.

6 Q You also did not test any witnesses' residences?

7 A Correct.

8 Q We also discussed at your deposition stack testing
9 that Weyerhaeuser did of the boiler stack. Do you
10 recall that?

11 A Yes.

12 Q And Weyerhaeuser in 1974 took samples from the
13 stack and sent it off to be analyzed for the presence of
14 asbestos; do you recall that?

15 A Yes.

16 Q And those results came back negative; correct?

17 A That's correct as I remember it.

18 Q And you don't have any information that stack
19 testing ever came back with positive results for
20 asbestos; correct?

21 A From the boiler? I mean that's the only stack
22 testing we've seen. We didn't see any from the bag
23 houses or any of the ventilation ducts or any of that.
24 All we seen is these one sample on a boiler.

25 Q And you also indicated -- we discussed at your
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1 deposition that Joe Wendlick, the industrial hygienist
2 at Weyerhaeuser, took samples from multiple cities
3 around central Wisconsin; correct?

4 A It's been awhile. My recollection is Wendlick took
5 some samples in Marshfield. I don't think we ever saw
6 the data from any other samples, at least I don't
7 recollect it. Correct me if I'm wrong.

8 Q He also went to Stevens Point, Stratford and
9 Wisconsin Rapids; correct?

10 A That's what he said, but I don't think we ever saw
11 any data.

12 Q And if his testing in those facilities -- those
13 cities matched the testing that he did in Marshfield,
14 you wouldn't have any reason to dispute those results,
15 would you?

16 A I'd have to look at them, figure out how he took
17 them.

18 Q But you've not expressed any opinion in your report
19 critiquing those samples that he took in cities around
20 central Wisconsin.

21 A That is correct. I don't have the data.

22 Q Have you asked for that data from the Casino Vaughn
23 law firm?

24 A I don't know that I used uniquely for that, but I
25 asked for whatever data they had from the plant.

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1 Q So it's your testimony at this point you've not
2 reviewed that data.

3 A My recollection is I have not seen the data. I
4 remember some discussion about other testing, but the
5 only offsite testing we have results for that I
6 recollect seeing are the studies, the Wendlick five
7 samples he took in town which we know maybe two of, and
8 the samples he took at the waste site and a few samples
9 he took on plant.

10 Q And you don't have any background studies from
11 Wisconsin to compare his data to, do you?

12 A There are none. That is correct. As far as I know
13 there are none.

14 Q In this case, you expressed an opinion that you
15 believe that dust came off of the dump trucks going to
16 the landfills; correct?

17 A Correct.

18 Q You've not found any plaintiffs to have lived
19 within, let's just say, half a mile of any of the
20 landfills; correct?

21 A Well, the record is what it is. I don't recollect
22 off the top of my head, but --

23 Q And you've not calculated any kind of dispersal
24 rate from the dump trucks as they went to the landfills;
25 correct?

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1 A That is correct.

2 Q And you've not found any correlation between where
3 the plaintiffs lived and the routes to the landfills;
4 correct?

5 A I don't know what you mean by correlation.

6 Q Well, there's no increased number of plaintiffs,
7 substantial number of plaintiffs who live on the routes
8 to the landfills as opposed to in any other part of this
9 Marshfield area; correct?

10 A I don't know. I did not try to do that study, that
11 analysis to compare it to everybody else.

12 Q You can't quantify the kind of exposure that
13 someone would have just driving into town in Marshfield
14 for any given year; correct?

15 A I have not quantified it, that is correct.

16 Q And you have not estimated it either; correct?

17 A We have not quantified it. I mean that's the same
18 thing as estimating.

19 Q Okay. You can't point the Court to any industrial
20 hygiene studies or environmental studies that would give
21 an amount that would be expected to be present in a town
22 like Marshfield with an asbestos plant that uses
23 asbestos in its products; correct?

24 A Well, not correct. I mean I quoted I think at
25 least one study that we looked at. Hang on a second

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1 here. We -- or in my report I looked at this Awad study
2 that should give some concentrations from around a
3 asbestos cement plant; somebody would be using asbestos
4 and it does have some concentrations associated with it.

5 Q And you would agree with me that the concentrations
6 from the Awad study were related to a plant that used
7 significantly more asbestos than the Weyerhaeuser
8 facility did; correct?

9 A I would agree; correct. But I did learn of that
10 travel.

11 Q And you have made no attempt to follow any kind of
12 industrial hygiene procedure laid out in any of those
13 studies. Let's just take the study that you just
14 mentioned there, the Awad study. You didn't make any
15 attempt to follow what they did in order to compare what
16 happened in Marshfield to that study; right?

17 A That's correct. But again, I'd like to explain.

18 THE COURT: You will have an opportunity.

19 THE WITNESS: I'm sure.

20 THE COURT: Why don't you go ahead, Counsel.

21 BY MR. METCALF:

22 Q You have not performed any calculations of exposure
23 levels that any of these plaintiffs would be expected to
24 have been subjected to in their homes; right?

25 A I haven't calculated any, but I think the
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1 literature gives us a pretty good idea what it most
2 likely was.

3 Q But you did not include any of that in your report,
4 did you?

5 A Yes, I did.

6 Q The level for any particular plaintiff, what they
7 would have been exposed to in their home?

8 A You mean on the individual plaintiff reports?

9 Q Yes.

10 A No. I included that in my overall report. I
11 didn't duplicate it.

12 Q You didn't calculate that for any particular
13 plaintiff.

14 A That is correct.

15 Q And you actually don't know when asbestos started
16 being used at this facility; right?

17 A There's no -- the record does not show a clear
18 indication and the indication is that they started
19 somewhere probably in the 50's.

20 Q But you can't say what amount of asbestos would
21 have been used in any given year; right?

22 A Well, there is some data that we pulled out of the
23 record indicating this 320 tons I think that was quoted.

24 Q Okay.

25 A But that came out of the Weyerhaeuser records.

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1 Q Right. But you can't point -- let's just say 1955,
2 if we pick it as a year, you can't tell me how much
3 asbestos you believe would have been emitted from that
4 plant in 1955; right?

5 A Quantitatively that is correct. I mean if they
6 are using asbestos, they're going to emit some. But we
7 don't know the quantity. I mean there's nothing in the
8 record.

9 Q And if we don't know the quantity, then you can't
10 know how far that asbestos traveled from the facility;
11 right?

12 A Quantity does not have much to do with
13 concentration.

14 Q Okay. Would --

15 A Go ahead.

16 Q Would wind direction have something to do with
17 concentration?

18 A No. Wind direction would have to do with the
19 distribution, transport, those types of things. But
20 even if you -- which I included in my report the wind
21 rose, you basically have wind coming from every
22 direction sometime during the year.

23 Q But you made no effort actually in your report to
24 analyze the wind direction and to take that into account
25 in coming up with your opinions; correct?

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1 A That's not correct. I had included the wind rose
2 information in my report and I used that in looking at
3 this community in coming up with my opinion.

4 Q You don't reference that wind rose within your
5 report anywhere, do you?

6 A It's attached to the report. It was part of the
7 report.

8 Q In the report itself, you don't do any analysis of
9 the wind rose data, do you?

10 A You mean did I write a paragraph on Appendix 6?
11 No, I did not. I just included Appendix 6 as part of my
12 reference material.

13 Q You simply make no reference whatsoever to the
14 direction of the wind within your report itself.

15 THE COURT: I think he's answered the question.
16 Why don't you ask your next one.

17 BY MR. METCALF:

18 Q You would agree with me that wind direction would
19 affect the dispersal of asbestos from this facility;
20 correct?

21 A Yes.

22 Q And you made no attempt to compare the wind in
23 Marshfield to any of the studies that you referenced in
24 your report; correct?

25 A That is correct.

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1 Q And you would agree that within your individual
2 reports, that in the exposure facts and assumption
3 section that was written entirely by the lawyers in this
4 case; correct?

5 A My recollection -- I want to make sure --

6 Q Just to help, if you look at the individual
7 reports, they say that it was incorporated verbatim from
8 plaintiffs' counsel.

9 THE COURT: In other words, you assumed those
10 facts.

11 THE WITNESS: That's correct. It seems to me I
12 went back at some point and read some depositions. But
13 yeah, the reports were based initially on assumed facts
14 from the lawyers.

15 BY MR. METCALF:

16 Q In terms of the take-home piece of your opinions in
17 this case, you did not quantify the amount of asbestos
18 that you believe any family member took home on their
19 clothes; correct?

20 A That is correct. I relied on the literature.

21 Q And there are a number of those family members that
22 you can't say to a reasonable degree of scientific
23 certainty whether they actually were working with
24 asbestos in the Marshfield facility at the time that
25 their family member, let's say, was a child?

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1 A Well, given all of the people involved in it,
2 there's a great variety of information on those kinds of
3 issues. Some of them we have -- I think we have who was
4 a child in the house where her father worked in the
5 plant. But I agree, it's all over the board.

6 Q And you would agree that for any particular
7 plaintiff, you cannot segregate or apportion the
8 exposures that you believe they had at home in the
9 environment or in the workplace.

10 A Apportion in what way?

11 Q You can't say this amount of exposure came from the
12 workplace, a separate amount of exposure came from the
13 home, and a separate amount of exposure came from the
14 environment. You can't quantify those; right?

15 A I have not quantified those, that is correct.

16 Q And several of the plaintiffs in these cases
17 actually lived outside of Marshfield for a majority of
18 their life; correct?

19 A Correct.

20 Q And there were several who lived in Chili 12 to 14
21 miles to the west of Marshfield; correct?

22 A Correct.

23 Q Ms. Treutel lived six miles outside of town;
24 correct?

25 A Correct.

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1 Q Mr. Seehafer almost lived in town almost not at
2 all; correct?

3 A Let me get the report. Based on my information, he
4 was -- lived a few months into town, that's correct.

5 Q And you obviously can't put any estimate on what
6 you think he would have been exposed to in those couple
7 months; right?

8 A You mean quantify it?

9 Q Yes, Your Honor -- yes.

10 A I have not quantified it.

11 Q And in fact, you actually don't even know how far
12 he lived from the facility when he was living in
13 Marshfield; correct?

14 A That's correct.

15 Q A number of the plaintiffs did not have a spouse
16 who worked in the Marshfield facility; correct?

17 A A number -- well, I have to go back -- I mean the
18 record is what it is. I mean I'd have to go back and
19 see. But you say a number -- what was the number?

20 Q Let me just put it this way: It is not the case
21 that not every one of these plaintiffs also had some
22 kind of spousal or familial exposure in their home.

23 A That is correct.

24 Q And you can't separate out the exposure from
25 asbestos that they would have brought home on their own

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1 clothes as an employee from what their spouse or
2 employee would have brought home; correct?

3 MR. FINCH: Objection. Asked and answered.

4 THE COURT: I'll sustain that objection. Let
5 me ask at this point, Mr. Ellis (sic), how much you have
6 for this witness?

7 MR. METCALF: I'm also done, Your Honor.

8 THE COURT: Almost done for a lawyer can mean
9 anything. Roughly.

10 MR. METCALF: No more than five minutes.

11 THE COURT: All right. Why don't we complete
12 it then if we could.

13 BY MR. METCALF:

14 Q You would also agree that there were numerous types
15 of dust emitted from this facility; correct?

16 A Correct.

17 Q There was dust from particle board operation;
18 right?

19 A Correct.

20 Q There was sander dust from the facility; right?

21 A Well, there were -- whatever they were sanding,
22 dust was emitted, that's correct.

23 Q And they weren't only sanding asbestos-containing
24 materials; right?

25 A That's correct, but they were sanding asbestos too.
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1 Q There was also dust in the area from the unpaved
2 roads; correct?

3 A In the -- I'm not -- on the plant was unpaved
4 parking lot as I remember and I suspect some of the
5 roads were unpaved too. But again, the dust on them is
6 a cumulation of all the other dust that had been
7 deposited there.

8 Q And there are witnesses who also testified to
9 cement dust being in the neighborhood; correct?

10 A But that -- that there was some discussion about
11 cement -- cement and cement dust. I don't think we ever
12 really pinned that down to be really significant in the
13 neighborhood.

14 Q Let me show you the testimony of Milton Boyer.
15 He's one of the employees in this case. I'll give you a
16 minute to look at that.

17 MR. METCALF: For the record I'm looking at
18 page 70, line 12 on down.

19 THE COURT: And this is from the testimony of
20 Milton Boyer?

21 MR. METCALF: Yes, Your Honor.

22 BY MR. METCALF:

23 Q Mr. Boyer testified that he had a car that he was
24 always polishing and that it would have light-colored
25 dust on it and that he believed that it was concrete

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1 dust that was piling up on his car. Do you see that?

2 A Yes.

3 Q And you didn't do anything to distinguish between
4 the types of dust in the community; right?

5 A I don't understand that question. I mean we
6 distinguished in the sense that the dust were a
7 combination of all the materials coming out of the plant
8 plus whatever else was in the computer. I think we
9 didn't ignore that.

10 Q You can't offer any opinion as to whether the dust
11 described in any particular person's house was cement
12 dust versus sander dust versus mineral core dust;
13 correct?

14 A We don't -- we don't have -- analytically we can't
15 answer that question. But factually from the testimony
16 I think you can reasonably conclude that at least some
17 of it was dust from the asbestos operations.

18 Q You've never published any articles on asbestos
19 emissions from a factory, have you?

20 A That is correct.

21 Q In putting together your report, there is no --
22 there's no written protocol that you followed to
23 determine how far asbestos dust would have gone from
24 this facility; correct?

25 A Correct. As far as I know there is no written
FRANK PARKER - CROSS

1 protocol.

2 THE COURT: Very good. We will take our lunch
3 break at this time and reconvene at 1:30. My criminal
4 matter at one o'clock is a bit unusual. Counsel assure
5 me that it can be done in 15 minutes. I'm fairly
6 confident it can be done in 30. So I would ask you to
7 be back at 1:30, with advance apologies if it takes a
8 little longer. If you want certainty, we could start at
9 1:45. But just because we only have the day, I'd like
10 to make sure we apply as much as possible to this
11 matter.

12 So we will reconvene at 1:30. And I believe those
13 are all the matters the Court wished to address except
14 the studies that I specifically mentioned that were
15 specifically asked by plaintiffs' counsel, Brody, I
16 believe that's the name. It might have been a Broky
17 (ph) or a Brokaw as well. Helsinki.

18 MR. FINCH: Cores.

19 THE COURT: There's a cores, yes. Thank you.
20 Helsinki. Dail & Hammar. An Anderson study, that is to
21 say the study that he did himself which he reported on
22 elsewhere from statistics within Wisconsin, and the
23 Maule study. Those are the ones the Court noted in
24 particular, but there could have been others.

25 I would ask both sides to assure that any

1 references to studies have been provided to the Court.
2 Again, I'm happy for the parties simply to give me a
3 list and docket number where I could find them. If it
4 is a docket number but it's an exhibit to a docket
5 entry, it should show both for the benefit of the Court.

6 Anything for the plaintiff at this time before I
7 break?

8 MR. HERRICK: Your Honor, I would just point
9 out when we set this hearing up, I was in communication
10 with the Court, and the Court's secretary, I believe,
11 and I told her that actually I have a hearing in
12 California tomorrow. So I may or may not be able to be
13 back.

14 THE COURT: I'm sure we can soldier on without
15 you, but I appreciate your advising the Court.

16 MR. HERRICK: I thought you might not care, but
17 I thought I should raise it.

18 THE COURT: Very good. And that's fine, and if
19 you need to go, I'll certainly not hold it against you
20 or your clients. Anything for the defendants at this
21 time?

22 MS. ELLIS: No, Your Honor.

23 THE COURT: Very good.

24 MR. FINCH: Your Honor, can we stay in the
25 courtroom or do we have to clear out?

1 THE COURT: Actually you can stay. I apologize
2 to the court security officer, but we'll make sure that
3 you'll have access. Generally we want to lock it down
4 to protect everyone's materials, but I'm not going to
5 require that here. So...

6 MR. FINCH: I don't want him to miss his lunch
7 break.

8 THE COURT: They have others. They have the
9 capacity to adjust to this. So you may continue to use
10 the courtroom. But it should be locked otherwise.

11 With that said, we will take our break and
12 reconvene at 1:30. Thank you all.

13 (Recess 12:40-1:33 p.m.)

14 THE COURT: All right. If you would again take
15 the stand, I would appreciate it. Thank you. Before we
16 proceed with redirect, Mr. Parker, I will just ask a
17 couple things and try to give the parties some
18 direction. The first is I have not located a copy of an
19 individual opinion, that is to say an opinion by
20 Mr. Parker individually for an individual plaintiff or
21 deceased individual and so if someone has a copy of one
22 of those, it would be helpful. That's the first.

23 The second is that we will proceed with this
24 testimony by Mr. Parker and then we will take up the
25 question of the general admissibility, in particular the

1 opinions that are being challenged with respect to
2 Dr. Abraham. If we conclude -- if the Court concludes
3 it's necessary to hear testimony from him, then we'll
4 take a break to get him on video conference, which I
5 understand can occur any time after 3 o'clock. Is that
6 correct, Counsel?

7 MR. FINCH: Yes. I think the parties have kind
8 of agreed that the issues have been sufficiently flushed
9 out with Dr. Anderson and we don't need to hear from
10 Dr. Abraham.

11 THE COURT: I don't disagree. I anticipated as
12 much and we will take up argument on that issue. If the
13 parties are in agreement, that probably simplifies it
14 entirely but I haven't decided that for certain.

15 With that said, unless there's something more for
16 the parties, we'll proceed with redirect, Mr. Parker.

17 MR. FINCH: May I proceed, Your Honor?

18 THE COURT: Please.

19 MR. FINCH: May it please the Court, Counsel.
20 Can I have the PowerPoint?

21 REDIRECT EXAMINATION

22 BY MR. FINCH:

23 Q Mr. Parker, do you have your report with you still?

24 A Yes.

25 Q This is the -- you did a general report and then
FRANK PARKER - REDIRECT

1 you did a shorter specific report for each case; is that
2 right?

3 A Correct.

4 Q Okay. Does this accurately summarize the type of
5 information you relied upon in order to do your general
6 report exposure assessment for Marshfield cases?

7 A Correct.

8 Q Okay. Let's talk about the historical data and
9 documents you rely upon. Do you recall you were asked
10 some questions by the Court about quantitative data in
11 terms of tons of asbestos? Do you recall that?

12 A That is correct.

13 Q Okay. In addition to data about the tons of
14 asbestos, was there also historical data from
15 Weyerhaeuser's files that had measurements of asbestos
16 fiber in the air at various points in time in various
17 places?

18 A Correct. It sure did. That part is in my report
19 too.

20 Q That's a quantitative data point that helped you
21 assess whether this was a factor that was emitting
22 asbestos into the environment?

23 A Yes.

24 Q Okay. Can you explain to the Court generally what
25 that information was and what it showed. If you need to

FRANK PARKER - REDIRECT

1 refer to your report, it's not a memory test, but go
2 ahead.

3 A Well, basically there are sort of two categories of
4 data, exposure data, in the record. The first is of the
5 workers themselves who are handling and manufacturing
6 these plants -- these fire doors. Those, like all
7 exposure, occupational exposures, are a distribution of
8 numbers, distribution of quantities. You don't get just
9 one exposure number. You get this distribution
10 depending on the tasks that are being done, the amount
11 of energy being put into the asbestos material, those
12 types of things; right? Because of, as I understand it,
13 because of OSHA in 1970/'71, the plant started to do
14 sampling of their workers. So that's -- we've got a
15 pretty significant amount of data there.

16 And what that data tells me, of course, is that
17 lots of asbestos fibers were being released in the
18 workplace. And it's important to understand that every
19 fiber that was released in that workplace is somewhere
20 today. There is no magic -- all right? So that tells
21 us there's lots of stuff being put into the workplace.

22 The other data we have, we have a couple samples
23 taken in the community and we have a few samples taken
24 at a waste site and we have a few samples taken,
25 associated in the parking lot where they're having all

FRANK PARKER - REDIRECT

1 kinds of complaints of large amounts of dust coming down
2 out of the plant. Every one of those shows a really
3 measurable significant concentration.

4 The other thing that all of them show you is that
5 as time went on and they started putting these
6 ventilation controls, they tried to remove -- they
7 basically tried to move the airborne concentrations
8 inside the plant out of the plant. They did that by a
9 ventilation system; goes into a bag house eventually.
10 Bag house has all kinds of problems. Frequently the
11 testimony is it's a guiser of this stuff coming out the
12 stack, vertically out of the stack which then gets
13 dispersed into the community.

14 All that data shows you that this plant, one, is
15 producing high concentrations of asbestos and it's not
16 well controlled. I mean that's what the data tells a
17 guy like me.

18 Q Okay. And then did you also review the depositions
19 of some of the witnesses, the fact witnesses, to help
20 form your view about what was going on in this plant and
21 the neighborhoods around it?

22 A Yes. They basically confirmed. Plus the really
23 unique thing here is you have people working in the
24 plants who see this dust from making these doors, these
25 asbestos doors, reporting that it's the same kind of

FRANK PARKER - REDIRECT

1 dust they see in the community. So I think -- I mean
2 that to me was very important.

3 Q In addition to reading depositions, did you
4 actually talk to some of the people involved, some of
5 the people who lived in the community back 20, 30, 40
6 years ago?

7 A Yeah. Yes. I talked by telephone to Vick and
8 Prust, as I remember, just on the telephone talking to
9 them about what was going on in the community.

10 Q And did that assist you in assessing whether the
11 dust you were seeing, the dust that witnesses reported
12 seeing would have asbestos in it?

13 A Yes, most likely. I mean again, it's very
14 consistent testimony in saying it was stuff that looks
15 like what we saw in the plant. I mean they're just
16 identifying.

17 Q And then also as part of your exposure assessment
18 and report, did you review the scientific literature,
19 the published literature out there, both industrial
20 hygiene literature and medical literature relating to
21 either household exposures or occupational exposures or
22 environmental exposures?

23 A Yes. From an industrial hygiene standpoint, that's
24 what I looked at, and those are all -- what have I got?
25 100 reference in here? I don't remember how many

FRANK PARKER - REDIRECT

1 references I had.

2 Q And we're not going to --

3 A Yeah.

4 Q -- clutter the record with all the references, but
5 I might direct you to a handful of them as we move along
6 here.

7 A Okay.

8 Q Let's get to some terminology before I go a little
9 bit further. This is a chart that talks about exposure
10 pathways. Is this a chart out of your report?

11 A Yes, I created it.

12 Q Okay. There's a term on here called *fugitive*
13 *emissions*. What does that mean?

14 A Fugitive emissions are emissions that get away from
15 you in places that you didn't want them to get away.
16 They're not trying to avoid the policemen, but it's
17 doors, windows, whatever it might be versus like they
18 eventually put a bag house, a ventilation system, that
19 would be considered a point source, a stack. The rest
20 of the way this material is getting into the plant and
21 out of the plant would be what we call fugitive
22 emissions.

23 Q There's a term that's been used called *fiber drift*.
24 What's that?

25 A Well, it's -- yeah. Fiber drift just means that
FRANK PARKER - REDIRECT

1 these small fibers basically behave very much like a
2 gas. They pretty much go anywhere you want. The ones
3 that most people are familiar with cause allergies,
4 pollen. These -- pollen tends to be five, ten times
5 bigger than these fibers.

6 So these very small fibers, like I say if you
7 release one in an absolutely still room with an eight
8 foot ceiling, probably takes somewhere around ten hours
9 to reach the floor. So wherever they -- when they are
10 released into the air mass, they will go wherever the
11 air mass takes them until they find some sort of quiet
12 place that allows them to ultimately settle out or they
13 impact something or they get on the clothes or on the
14 wall or some horizontal surface.

15 Q Can you elaborate for the Court -- the Court has
16 your CV and we don't need to go through your
17 qualifications. But I think one thing that's not sort
18 of detailed in your CV is some of the dust dispersion
19 studies and experience that you have. Can you elaborate
20 a little bit on that for the Judge.

21 A Well, first academically, physics. When I went to
22 School of Aerospace Medicine, I was introduced to dust
23 and air pollution and that kind of stuff. I did a lot
24 of work on nuclear weapon dust dispersion from nuclear
25 weapons, accidents and that kind of stuff and exercises

FRANK PARKER - REDIRECT

1 and all that, biological, chemical weapon.

2 We did -- a major big -- a big project where we
3 burnt beryllium-enriched propellant waste in the Dugway
4 Proving Groundwork. We did all the air sampling and
5 trying to disperse -- determine dispersion of beryllium
6 primarily in toxic metal. I work on rocket grains,
7 firing rocket grains with beryllium in, looking at
8 distribution --

9 THE COURT: And Counsel, if I haven't said it
10 before, I have no doubt as to the expertise of the
11 individuals that are being challenged. The only
12 question is whether or not they are bringing it to bear
13 with regard to the specific relevant --

14 MR. FINCH: I understand. That was a lead in
15 to my next question which was --

16 BY MR. FINCH:

17 Q You were asked some questions about the lack of
18 quantitative air modeling or modeling done here. Why
19 didn't you regard that as necessary or relevant?

20 A Well, there's two primary reasons, one of them very
21 technical. And that is when you do a model, the first
22 question is what are you going to do with the number
23 that you come out with. What are you going to compare
24 it to. And with asbestos, the problem we have is we
25 don't have any number. We have significant exposures

FRANK PARKER - REDIRECT

1 defined as a brief low-level exposure, something above
2 ambient; right? So we don't have -- you don't have
3 anything to compare it to. So you crunch all these
4 numbers and sort it.

5 The second thing is when I look at this, I don't
6 see a real value in it from an industrial hygiene
7 standpoint of trying to determine whether there were
8 significant emissions out of this plant, whether there
9 was opportunity -- whether there was a pathway, the
10 plant being the source, whether there was a pathway to
11 get out into the community, which is air dispersion,
12 carrying it out on clothes, cars, trucks, whatever it
13 is, and a receptor which is the worker, the people in
14 the community, the people in the house. All those are
15 really straightforward in this case. I mean there's --
16 I'm not sure doing a big model, which we would fight for
17 days over what the assumptions were, will add any more.
18 To me, it would not add any more information.

19 Q From the perspective of an industrial hygienist,
20 was this a clear-cut case if you came to this factory in
21 1975 and were told to identify the dangerous things
22 going on, what would you say? What would you tell --

23 A You'd say you have to stop it. You've either got
24 to get rid of the asbestos and clean everything up
25 because the exposures continue if you leave it out there

FRANK PARKER - REDIRECT

1 in the environment and the plant or you somehow have to
2 wall it off so it doesn't get away from you.

3 THE COURT: Do you agree with Dr. Anderson's
4 assumption that a concentric circle around the plant of
5 1.25 miles is an appropriate area to consider the zone
6 of significant exposure or the area of greatest
7 concentration?

8 THE WITNESS: Yes. And that's based on -- the
9 real valuable science here is the epidemiology here in
10 my opinion. That's what the epidemiology study says and
11 I think it's pretty reasonable.

12 THE COURT: Despite the fact that it continues
13 to disperse, it can disperse in all kinds of --

14 THE WITNESS: Oh, yeah. It goes -- the issue
15 is concentration, maintaining a concentration that
16 provides you some sort of a dose, some sort of a
17 concentration times time that's significantly more than
18 typical ambient.

19 THE COURT: Understood. Thank you.

20 BY MR. FINCH:

21 Q Before we get to levels of exposure and typical
22 ambient, I want you to define what is re-entrainment as
23 it relates to asbestos fibers.

24 A Well, re-entrainment happens anywhere that asbestos
25 or any small particle settles out. Probably the best

FRANK PARKER - REDIRECT

1 example I can give you is your wife. On the dining room
2 table, she comes in, she sees the table, mine anyhow,
3 it's got dust on it, so she goes and wipes it down,
4 comes back an hour later, there's dust on it. Probably
5 over half of that dust is dust that when she wiped it,
6 she pushed it up in the air and it settled back down.
7 That's re-entrainment.

8 THE COURT: I bet your wife has never accepted
9 that explanation. Next question.

10 THE WITNESS: No, she hasn't, Your Honor.

11 MR. FINCH: Yes, Your Honor.

12 BY MR. FINCH:

13 Q How do environmentalist -- significant
14 environmental asbestos exposure such as some of the ones
15 that were measured by the Weyerhaeuser people back in
16 the 70's and since what you've seen in the literature
17 around a factory plant, how does that compare to ambient
18 air? And that's what my next series of questions is
19 going to be.

20 And so first of all, we're talking about fibers per
21 cubic centimeter or fibers per cubic mm. What is the
22 measurement to measure fibers for -- fibers in ambient
23 air?

24 A Well, generally it's fibers per cubic centimeter,
25 which is about the size of a sugar cube.

FRANK PARKER - REDIRECT

1 Q Okay. You were asked some questions by defense
2 lawyers about why haven't you done any background,
3 ambient air studies around Marshfield. And you said --
4 they asked you if you did them. You said no, I didn't
5 think they were necessary and the Judge said can you
6 explain. Can you explain why you didn't do background
7 study just for Marshfield?

8 A Well, first off you can't go back and reinvent
9 history. I mean the real question is what was the
10 background concentrations in Marshfield in the 1970's.
11 There's no way to recreate that. I mean if we go out
12 there today and take air samples, the question is how do
13 I relate those; right? The government, the company,
14 nobody went out and took except for these few samples
15 that I'm aware of. We looked. There's -- so you don't
16 have a database out there to compare it to.

17 So you're stuck with looking at --

18 THE COURT: It would have some importance;
19 right? I realize that you can't recreate the exact
20 conditions, but scientists are regularly looking at
21 dispersions. I would think a 20-year period for
22 concentration levels, you could look at soil samples and
23 draw some reasonable corollaries.

24 THE WITNESS: You can't.

25 THE COURT: And why is that?
FRANK PARKER - REDIRECT

1 THE WITNESS: Well, there's no scientific basis
2 for it.

3 THE COURT: No one has ever attempted to do
4 that?

5 THE WITNESS: I am not aware -- I mean the area
6 which probably had more study than anything is
7 radioactive materials, particles, and even there there
8 is not very good science on trying to do that. And they
9 have spent millions of dollars trying to correlate a lot
10 of this stuff and it really --

11 THE COURT: And is the difference between that
12 and, say, climate studies that use soil sampling that
13 we're talking about, much larger periods of time?

14 THE WITNESS: Oh, yes.

15 THE COURT: Essentially they do it on that
16 basis.

17 THE WITNESS: That's correct. They do it, but
18 it depends what you're looking for. When you're looking
19 for these various -- most of the environmental things
20 you can look for with analytical methods that can look
21 at very small masses. I mean the problem with fibers is
22 you are looking at an extremely small mass and an
23 extremely -- and you have to find them. You can't
24 weigh -- you can't take a bunch of soil, put it through
25 a chemical process, and figure out how much sodium is in

FRANK PARKER - REDIRECT

1 there or how much sulfur or how much carbon.

2 THE COURT: So it's similar for volcanic ash.

3 THE WITNESS: Right.

4 THE COURT: It's sufficiently heavy in mass and
5 detectable by testing, but you can draw some time
6 corollaries.

7 THE WITNESS: That is correct.

8 THE COURT: All right. Next question.

9 BY MR. FINCH:

10 Q Okay. When you are using the term unpolluted
11 ambient air, what sources do you look through and what
12 are the ranges of unpolluted ambient air?

13 A Well, there's two basic ones anymore. If you look
14 backwards, the National Academy of Science looks at
15 00007 is what they came up with.

16 Q 0.00007 fibers per cubic centimeter?

17 A Right.

18 Q Okay.

19 A And that's the range. 0002 to 0007.

20 Q And then the ATSDR has some data that's roughly
21 comparable?

22 A Right. The EPA ATSDR is somewhere between 10 to
23 the minus 5 and 10 to the minus 8.

24 Q Okay. So that would be point four zeros and a one
25 or point seven zeros and a one?

FRANK PARKER - REDIRECT

1 A Right. So they're in there. What we see in this
2 data is 1, 2, 3, 4 -- 4, even more. I mean one of the
3 samples they took is point something, so that's --

4 Q Okay. So --

5 THE COURT: Does that exist anywhere in the
6 United States, truly unpolluted ambient air?

7 THE WITNESS: Yes.

8 MR. FINCH: Do you mean by zero fibers or --

9 THE WITNESS: You mean -- okay. I apologize.

10 THE COURT: I thought you were --

11 THE WITNESS: Define unpolluted. Zero?

12 THE COURT: Exactly. No, this. If we accept
13 this definition of unpolluted ambient air, is this
14 typical for areas in the United States? Is this the
15 average? Because I thought it was higher.

16 THE WITNESS: Well, you're always going to have
17 exceptions on both ends.

18 THE COURT: Right. But your understanding is
19 that this would be considered -- this is a standard of
20 unpolluted ambient air fibers per cubic centimeters.

21 THE WITNESS: Generally accepted, that is
22 correct. You're always going to have exceptions, but
23 rural air is going to be a lot cleaner, of course, than
24 somebody in downtown New York City with one of breaks.
25 But there's a big variation.

FRANK PARKER - REDIRECT

1 THE COURT: Understood.

2 BY MR. FINCH:

3 Q But it's the National Academy of Sciences 1984,
4 that's taken from a collection of data across a broad
5 variety of cities and they come up with that average; is
6 that how that --

7 A That's what they came up with, that is correct.

8 Q Okay. And that's accepted by industrial hygienists
9 in your field as what you would look to for a background
10 ambient unpolluted air.

11 A Correct.

12 Q Unpolluted with big quotes around it.

13 A Right. I mean that's why I have more than one of
14 them. There's other people argue about different
15 numbers, but that's about what we've got.

16 Q Okay. And then how do the measurements taken
17 contemporaneously in Marshfield outside the plant in the
18 neighborhood that you have in your report, how does that
19 compare to that?

20 A Well, there's -- one is .005. Let me get to those
21 numbers.

22 Q They're in your report. Let me just direct you
23 where to look in your report.

24 A Page 10, G. He took five samples, but he did not
25 -- he only reported the low and high, which was .003 and

FRANK PARKER - REDIRECT

1 .005. So that's --

2 THE COURT: When you say he, you understand
3 that to be someone working at the Weyerhaeuser plant?

4 THE WITNESS: That's correct. Mr. Wendlick.
5 So that's at least two orders magnitude higher than what
6 we've got -- three orders actually. And if you look at
7 the ten to the minus 8, it's five orders of magnitude.

8 BY MR. FINCH:

9 Q From the perspective of an industrial hygienist, is
10 that a significant and substantial asbestos exposure
11 that you would be worried about?

12 A Yes.

13 Q OSHA, the Occupational Safety and Health
14 Administration, has what's called *permissible exposure*
15 *limits*.

16 A Right.

17 Q Do those -- are those intended to protect against
18 mesothelioma?

19 A No.

20 Q Does the OSHA regulations say that at that level of
21 exposure there is no risk?

22 A It does not. And the important thing to remember
23 is OSHA is only talking about healthy males primarily
24 who are in the work force. They are not talking about
25 and it's inappropriate to apply that to ambient, to

FRANK PARKER - REDIRECT

1 householders, to young, the old, the infirm.

2 The other important thing to remember about it, it
3 implies that you only have an eight-hour exposure, you
4 have 16 hours to recover, and you have a weekend to
5 recover. In the ambient, especially in environmental
6 ones, you do not have any time to recover. You're
7 exposed for that 16 hours both outside and in the house,
8 weekends, holidays, whatever it might be. So that is a
9 grossly inappropriate application of PEL to anything
10 outside of the workplace.

11 Q Okay. We'll get to in the house, household
12 exposures in a few minutes. But sticking with community
13 or neighborhood exposures, did you also cite to some
14 literature of published studies that talk about
15 exposures that you thought were similar to Weyerhaeuser
16 here involving exposure from a plant polluting a
17 neighborhood?

18 A Yes. The one we talked about a little earlier was
19 this Awad study.

20 Q And on this slide here, do we have some of the
21 other ones that you have in your report --

22 A Yes.

23 Q -- listed?

24 A Yes.

25 Q Could you just run us through those quickly and
FRANK PARKER - REDIRECT

1 describe what those situations were and why you thought
2 they were useful to --

3 A Let me find the right page.

4 Q -- preparing your report. Page 24 perhaps?

5 A 24. There you go. You're ahead of me. Thanks.
6 Well, probably the landmark on that paper everybody
7 refers to is the 1960 Wagner study. It was a town
8 around an asbestos mine in Africa. He was the first to
9 really demonstrate the people not only in the mine but
10 the household and people just in the environment
11 developed mesothelioma.

12 The other one I pointed to was the Libby Montana
13 experience we've had where most people read about that
14 in the newspaper.

15 Q And just to be clear, Libby was a vermiculite mine
16 owned by the WR Grace Company?

17 A Yes.

18 Q And the contaminant of the vermiculite was
19 tremolite, which is another amphibole fiber?

20 A Correct.

21 Q Okay. And then what happened in that town to the
22 people around the town? What was observed?

23 A Well, even though it's a relative to -- we're
24 talking about 15 percent asbestos in this fire door.
25 You're talking about less than 1 percent typically in

FRANK PARKER - REDIRECT

1 the tremolite Libby. But they still found disease.
2 They found a contaminated ape. They even found it in
3 the tree bark. They found it in pets. I mean it just
4 demonstrates how this material can be just distributed
5 throughout the company.

6 Q And were there papers published -- I think you have
7 the collection to the overview, but were there papers
8 published in the peer-reviewed literature that
9 documented the mesotheliomas around --

10 A Yes.

11 Q -- from these community exposures?

12 A Yes. They also had -- I want to make sure. They
13 also had a lot of what we call *plant exposures*. It was
14 very similar to what we have here.

15 Q You had people that were exposed working in the
16 plant. You had people exposed in the community. And
17 then people exposed take home, when they come home from
18 the plant.

19 A That is correct.

20 Q The Tarres, what's that about? What was the type
21 of asbestos and what was the plant?

22 A Well again, it was an asbestos cement plant where
23 they had both amphiboles and serpentines. They did
24 it -- I mean I don't know if Dr. Anderson talked about
25 it, but they found a correlation between mesothelioma,

FRANK PARKER - REDIRECT

1 the distance from the plant and the local wind
2 conditions in people who did not work in the plant.
3 Again, it's just a demonstration of these fibers getting
4 into the community.

5 Q Getting in the community and creating significant
6 exposures to anyone who comes into that community, into
7 that radius?

8 A That's correct.

9 Q And then finally I think Kumagai, there was a lot
10 of discussion with Dr. Anderson about Kumagai. You were
11 sitting in the courtroom. Is there anything you want to
12 add to Dr. Anderson's testimony about Kumagai?

13 A No, not really. He knows that stuff better than I
14 do.

15 MR. FINCH: Does Your Honor have any more
16 questions about the Japanese study?

17 THE COURT: Why don't you ask your questions,
18 Counsel.

19 MR. FINCH: Thank you.

20 THE COURT: If I do, as you know I won't
21 hesitate to ask.

22 BY MR. FINCH:

23 Q Within the 1.25 mile radius around the Weyerhaeuser
24 plant, did you have evidence of visible dust emissions?

25 A Sure. I mean especially these descriptions of the
FRANK PARKER - REDIRECT

1 bag house like -- they called it a guiser shooting stuff
2 up into the air. The testimony of not only the
3 plaintiffs, but the records in the plant about how they
4 were constantly getting complaints from the local
5 railroad and from the people in the parking lot getting
6 this material on their cars. I mean there's all kinds
7 of factual testimony that this material is getting out
8 of the plant.

9 Q Does the presence of visible dust provide evidence
10 of significant exposure without quantitative
11 measurements?

12 A Yes. I mean --

13 Q Why so?

14 A Well, if you just -- in general looking
15 historically, I mean if you have a product like we're
16 talking here, either the raw asbestos or when they
17 started handling that or cutting and sanding and all
18 that or the stuff going up the stack, you can almost be
19 assured that you're above any kind of standard.

20 More importantly for the environment is that the
21 EPA under the hazardous -- Hazardous Emergency Response
22 Act under the Clean Air Act declared -- they were
23 convinced, and they so state, that if you have any
24 visible emissions, it is an unacceptable risk to the
25 community, period.

FRANK PARKER - REDIRECT

1 MR. METCALF: Your Honor, I'm just going to
2 object to the testimony about the visible emissions.
3 That's something that is part of NESHAPS and the Court
4 has ruled already on the admissibility of that.

5 THE COURT: That's fine. You can ask your next
6 question.

7 BY MR. FINCH:

8 Q Is it also professional industrial hygiene
9 standard, leaving aside NESHAPS, that if you see visible
10 dust from something you suspect you have asbestos in it,
11 that's a dangerous exposure?

12 A Yes. Most practicing industrial hygienists
13 wouldn't even bother to take any air sample. They'd
14 just say they've got to stop this right now.

15 Q Okay. You were asked some questions about some
16 work you did involving a plant in Algoma and there was
17 some testing of some of the houses nearby. Do you
18 recall those questions?

19 A Yes.

20 Q Okay. Can you explain to the Court what processes
21 that were used in the Algoma plant were as compared to
22 the plant here in Marshfield?

23 A They were somewhat similar. The thing we didn't
24 have there was a lot of this fact witness testimony
25 about visible emissions, dust in the community, that

FRANK PARKER - REDIRECT

1 type of thing.

2 Q So you had -- in this case, the Marshfield case,
3 you had that testimony. You didn't have it in Algoma?

4 A That's my recollection.

5 Q Why is it you decided that it wasn't necessary to
6 do a systematic testing of all of the houses in some
7 vicinity around the Marshfield plant as compared to
8 doing that kind of work in Algoma?

9 A Well, when Mr. McCoy and I first started, I thought
10 basically the fact testimony and stuff we had out of the
11 plant really was more than enough. I didn't think we
12 needed to go to the expense and all that of trying
13 designing a scientific study to make sure we had houses
14 that were there at the same time and that they hadn't
15 been -- you know, there's a lot of work that goes into
16 trying to design those kinds of studies and I just
17 didn't think it was necessary.

18 Q What significance, if any, is there for the
19 negative soil samples that apparently someone in your
20 office did?

21 A Well, first off I did not design the study. I
22 didn't rely on the study. I have no idea how it was --
23 the sites were picked. The client called us and wanted
24 somebody to come up there and help them. We sent
25 Mr. Debrese (ph). They told him where to sample. So

FRANK PARKER - REDIRECT

1 from my standpoint, I don't think they're very helpful.

2 But I would also point out I think they ultimately,
3 when I looked at those in deposition, they actually
4 found a fiber in one of the samples.

5 Q There was discussion with Dr. Anderson about the
6 Helsinki criteria. You recall that?

7 A Yes.

8 Q And am I correct that some of the experts that were
9 at the Helsinki conference in Finland were industrial
10 hygienists?

11 A Yes.

12 Q From the perspective of industrial hygiene, what is
13 a significant exposure, asbestos exposure that you would
14 consider to be significant or dangerous or could give
15 rise to disease?

16 A Well, I think they define it fairly well. They
17 just say a significant exposure that look at
18 occupational, household, domestic they call it, and
19 environmental. It's basically anything above ambient.

20 Q Is there anything in the Helsinki report criteria
21 that require you to have a quantitative measure or
22 estimate of a given exposure like an occupational
23 exposure or a household exposure or a domestic exposure
24 in order to make the determination that it's
25 significance?

FRANK PARKER - REDIRECT

1 A No.

2 Q Does the Helsinki criteria talk about the -- thank
3 you -- talk about the comparability of household
4 exposures and occupational-level exposures?

5 A That's true. Yes, it does.

6 Q What does it say?

7 A Well, and if you look at the data, the household
8 exposures were for laundering, especially if you do
9 things like vacuum cleaning, those kinds of things.
10 Those concentrations are substantially similar to what
11 you find in the workplace like the Marshfield plant.

12 Q Okay. In the language of the Helsinki criteria,
13 they say in some circumstances exposures such as those
14 occurring among household members may approach
15 occupational levels.

16 A Yes. I mean if you look at the data, they more
17 than just approach it, they probably -- they're pretty
18 congruent except for the very high numbers, the very
19 high limit, upper end of the distribution of exposures.
20 The highest I've seen in a household is probably 15
21 fibers per CC. The highest you see in a plant may be a
22 couple hundreds fibers per CC.

23 Q Okay. And in your report, not your individual
24 plaintiff report but in your general report, do you have
25 the data of what the literature shows for the types of

FRANK PARKER - REDIRECT

1 asbestos exposures associated with doing things like
2 sweeping up asbestos fibers in a location, picking up
3 clothes, loading a washer/dryer; do you have that in
4 your report?

5 A Yes.

6 Q Okay. Could you tell the Court what those ranges
7 are? The first one I saw was on page 23 about sweeping.

8 A Yeah. Well, like I say, the highest numbers you
9 see are things like vacuum cleaners which I think show
10 you. And the reason for that, that's why bag houses are
11 also -- I mean you think of a vacuum cleaner is a small
12 bag house. The mechanical energy that a vacuum cleaner
13 puts into picking the dust up off the floor, these
14 fibers are not individual fibers. They're not just a
15 single fiber. They are what's called a fiber bundle and
16 each one has a fibril. And so the mechanical energy
17 breaks those up. So you end up with one fiber, you end
18 up with more than one.

19 You then blow it out through the sides of the bag.
20 Many of those then get re-entrained back into the air.
21 So that's the highest I think we found was about 15
22 fibers per CC from that.

23 Q Okay. What about for doing activities like shaking
24 out clothes, putting clothes in the laundry. Do you
25 have a section in your report that talks about that?

FRANK PARKER - REDIRECT

1 A Yes. I mean again, they're pretty much all over
2 the place. Wendlick himself did some sampling on
3 washing the clothing from their workers and he got 8.3
4 and 9.1 fibers per CC. Literature goes -- some of it
5 goes much lower: .4, .1. So you have again this
6 distribution.

7 Q Dr. Anderson talked about one of his own studies
8 which he wrote a paper about in 1976 where household
9 occupants were developing asbestosis and pleural
10 disease. As an industrial hygienist, what does that
11 tell you about the kinds of exposures you can experience
12 from living in a house once asbestos dust gets into it?

13 A It's very high.

14 Q Is the exposure that occurs once asbestos dust gets
15 into the house, whether it's brought home on the clothes
16 of somebody or whether it comes in through the air
17 because you're living in a polluted community, what are
18 the activities that occur inside the house, the
19 household activities that give rise to additional and
20 continuous exposures to asbestos? What are some of the
21 things that people do -- I think you've touched on them
22 so far, but let's just try to make a laundry list of
23 things that aren't work related but that once the dust
24 gets into the house, activities in the house that create
25 more exposure.

FRANK PARKER - REDIRECT

1 A Well, anything that takes these fibers that have
2 either settled out or are still in the air and disturbs
3 them: Sweeping; family contact with a washing, if it's
4 contaminated clothes they pull them out of the hamper,
5 whatever it may be and get it on their own body, that
6 contaminates their clothes; not only does picking them
7 up release fibers, but in contaminating their own
8 clothes, hands, and then eventually some of those are
9 released afterwards or during that period of time, so
10 that adds to the exposure.

11 THE COURT: Counsel, we strayed pretty far from
12 the areas of cross. This is all laid out in his report.

13 MR. FINCH: Okay.

14 THE COURT: So if you have something more
15 specific, you should get to it.

16 BY MR. FINCH:

17 Q From the perspective of an industrial hygienist,
18 you were asked a lot of questions about quantify this,
19 quantify that. Do you need a contemporaneous
20 quantitative measurement or a quantitative estimate of
21 exposure in terms of fiber per CC in order for you as a
22 industrial hygienist to say this is a significant
23 dangerous exposure that could give rise to risks of
24 disease if not controlled?

25 A No.

FRANK PARKER - REDIRECT

1 MR. FINCH: That's all I have.

2 THE COURT: Very good. Any redirect?

3 MR. METCALF: Just two areas.

4 THE COURT: Recross. (2:13 p.m.)

5 MR. METCALF: Yes, Your Honor.

6 RE CROSS-EXAMINATION

7 BY MR. METCALF:

8 Q Mr. Parker, we talked a little bit about the
9 background standards and you referenced one of -- I
10 guess page 10 of your report I believe it was where you
11 talked about the NRC --

12 A Okay.

13 Q -- study that looked at background?

14 A Yes.

15 Q That study was done looking at TEM; correct?
16 Transmission electron microscopy?

17 A Yes.

18 Q I believe that's correct. Not PCM; right?

19 A That's correct.

20 Q And are you familiar with the NIOSH revised
21 recommended asbestos standard from 1976?

22 A Yes.

23 Q At the end, it looks at ambient levels and ends
24 with a discussion of background levels reviewed using
25 phase contrast microscopy. Do you see that?

FRANK PARKER - RE CROSS

1 A That's what it says.

2 Q And they report in this study or in this article
3 that studies indicate ambient levels to be generally
4 less than .01 fibers but some peak values as high as .03
5 fibers; correct?

6 A That's what they say.

7 Q And those are in the range of the numbers that
8 Mr. Wendlick reported; right?

9 A That is correct.

10 Q You mentioned Libby Montana. In Libby Montana,
11 they used vermiculite and tailings from that mine on the
12 golf courses and the tracks and all around that
13 community; right?

14 A That's correct.

15 Q We don't have that situation in Marshfield, do we?

16 A Not that I know of.

17 Q Lastly, you mentioned that in Algoma, I believe
18 your testimony was there was -- you didn't have these
19 descriptions of dust in the community; right?

20 A Not like we have -- not like we had here as I
21 remember.

22 Q Let me show you your testimony from April 14, 2010,
23 and if we look at page 42, line five. You're asked
24 about the sampling that you took and you say that if you
25 take the sampling essentially by itself is one thing,

FRANK PARKER - RECROSS

1 "But if you put it together with the descriptions of the
2 dusty emissions from the plants, you put it together
3 with the description of the dust coming out of trucks
4 going down the streets, the community complaining about
5 the dust, the fact that the dust contained large
6 quantities of asbestos, et cetera." You're references
7 there community descriptions; correct?

8 A Well, yes. It was primarily about the -- as I
9 remember, about the plant itself and the trucks. I
10 don't -- that's what -- it is what it is.

11 MR. METCALF: That's everything I have, Your
12 Honor.

13 MR. FINCH: Can I have one brief re--

14 THE COURT: You may after this question which
15 is simply how do you account for the distinction between
16 the ambient air numbers that you quote and the NIOSH
17 numbers in '76?

18 THE WITNESS: Simply because that was 1976 they
19 had very limited database. It's about the time the
20 National Academy of Science went out and looked at all
21 kinds of data they could find, and actually since then,
22 as we just said, the EPA ASTDR (sic) has looked at even
23 additional data to come up with this ten to the minus 5,
24 ten to the minus 8.

25 THE COURT: And when the EPA did that, what
FRANK PARKER - RE CROSS

1 year was that?

2 THE WITNESS: AT -- the high criteria was '76.

3 The -- hang on a second here.

4 MR. FINCH: Were you asking about the National
5 Academy of Sciences document?

6 THE COURT: Yes.

7 THE WITNESS: What year was that?

8 THE COURT: While you're doing that, were you
9 able to pull one of the specific reports for Mr. Parker?

10 MS. CLARK: I have all eight if you like.

11 THE COURT: One would be great. I just need
12 one. Thank you very much, Counsel.

13 MR. FINCH: The National Academy of Sciences
14 report speciform fibers is 1984. The ATSDR report was
15 2001. And then I have one followup question based on
16 that.

17 FURTHER REDIRECT EXAMINATION

18 BY MR. FINCH:

19 Q They showed you a 1976 NIOSH document where they
20 were measuring fibers in the air using a PCM. Do you
21 recall that?

22 A Yes.

23 Q But the 1984 NAS was using transmission electron
24 microscopes; right?

25 A Correct.

FRANK PARKER - REDIRECT

1 Q Can you distinguish asbestos fibers from something
2 else just using PCM or do you need to use TEM?

3 A TEM is by far the better scientific method. PCM is
4 very useful. We use it a lot. It depends on what the
5 source is and what you know about it.

6 Q Okay. And when using an electron microscope, you'd
7 be able to see more -- using TEM, would you be able to
8 see more asbestos fibers if they were, in fact, there in
9 the unpolluted ambient air?

10 A Actually TEM looks at a very much smaller area than
11 PCM and so more or less isn't the issue. The real issue
12 is TEM tells you and confirms that it's an asbestos
13 fiber where PCM is difficult to do that with.

14 Q And it's your testimony as an industrial hygienist
15 then when you're talking about "unpolluted background
16 ambient air," the best source is the National Academy of
17 Science, its peer-reviewed studies?

18 A That's my opinion, that and the ASTDR.

19 THE COURT: Very good. You may step down,
20 Mr. Parker. Thank you for your time today.

21 THE WITNESS: Thank you.

22 (Witness excused at 2:18 p.m.)

23 THE COURT: Why don't we just talk briefly
24 about the other report at issue, Dr. Abraham. And
25 perhaps since it's defendants' motion, I'll hear from
FRANK PARKER - REDIRECT

1 you as to whether you think there's anything more that
2 would be served by having him testify.

3 MS. ELLIS: Your Honor, Dr. Abraham's opinions
4 are to some degree cumulative of Dr. Anderson. He
5 confirms the diagnosis, which is a unique piece of his
6 opinion and for the purposes of this motion we're not
7 arguing over his diagnoses. But he does take the second
8 step of making a specific causation opinion, which
9 overlaps with Dr. Anderson.

10 THE COURT: And when you say that, does he use
11 the substantial language as well?

12 MS. ELLIS: I believe so, Your Honor. Let me
13 look specifically at his report. We'll pull it out.

14 THE COURT: I see him saying asbestos exposure
15 is well known to be the cause of nearly all malignant
16 mesothelioma.

17 MS. ELLIS: Yeah. And Dr. Anderson at his
18 deposition testified he was asked to assume that there
19 were exposures in the community and asked to --

20 THE COURT: Dr. Anderson or Dr. Abraham?

21 MS. ELLIS: I apologize.

22 THE COURT: You have them both.

23 MS. ELLIS: Dr. Abraham testified he was asked
24 to assume exposure in those two settings and he
25 testified that assuming there was exposure, he would

1 testify that they were causal. Our objections with his
2 opinion are really captured in our argument over the --
3 every fiber theory that the parties briefed --

4 THE COURT: Well, that's what I'm getting at
5 because the every fiber opinion I think probably is
6 supported by science; that this -- that these
7 nonoccupational exposures are a substantial cause I
8 think is where the science may break down. To the
9 extent that he's only expressing the opinion that every
10 fiber is causal or can be causal, I'm not sure I
11 understand the basis to exclude it. But we don't -- I
12 don't disagree that that's as far as he's testified.
13 There's really nothing more to explore as to his
14 opinions.

15 MS. ELLIS: Right.

16 THE COURT: Anything more for the plaintiff on
17 that subject?

18 MR. FINCH: No. I think given where the rubber
19 hits the road is whether the household and the
20 neighborhood exposures can be substantial contributing
21 factors. I don't think Dr. Abraham's testimony adds
22 anything more to that beyond the two witnesses Your
23 Honor has already heard from. I don't agree that he's
24 necessarily cumulative because I think we could call him
25 and talk about various things at trial, but for purposes

1 of this hearing today I don't think we need to hear from
2 the good Dr. Abraham, who is waiting patiently in
3 Syracuse.

4 THE COURT: All right. If you want to notify
5 him that we won't be adding him, I'm sure he'd
6 appreciate finding that out. So feel free.

7 While that is occurring, let me try to focus the
8 parties' closing remarks today. I do want to go back
9 and look at these studies and the other materials that
10 have been referenced today, but I agree that at the end
11 of the day, we are looking at a question as to the
12 relevance of evidence of significant exposure, which I
13 think is clearly relevant, and whether or not
14 Mr. Anderson has provided enough support for that
15 testimony. And then evidence of substantial cause and
16 whether Dr. Anderson's testimony is sufficiently
17 supported to allow that to be accepted.

18 Let me address, because we just talked about it,
19 Mr. Anderson's testimony.

20 MR. FINCH: Mr. Parker.

21 THE COURT: Let me try that again. Thank you.
22 Mr. Parker's testimony, not Dr. Anderson's. Mr. Park's
23 testimony. Thank you. Assuming that the only
24 epidemiological studies that we have work from a zone no
25 larger than 1.25 miles, it seems to me that he's given

1 enough basis to believe that when this plant was in full
2 operation that there were or he at least can opine that
3 there were significant exposures within that zone.

4 I don't see any science behind testimony that there
5 was for causation purposes significant exposure beyond
6 that level, beyond that zone that is measurable and
7 causal in terms of epidemiological studies. That's
8 different than to say there could not be other areas
9 where one is exposed, for example, with at least with
10 respect to some of the, I'm going to call them
11 plaintiffs because it's simpler, but I understand
12 technically they may not be represented by estates; that
13 there were plaintiffs who may have had, and he and
14 Dr. Anderson would so opine, significant exposures as a
15 result of having their parents coming home from the
16 plant with asbestos on clothing or otherwise. And
17 perhaps that might get you there. Although as I look at
18 his reports, I'm not sure how any of those would apply.

19 In any event, it's one thing for him to testify
20 that they were significant exposures because of those
21 other kinds of nonoccupation exposure besides activities
22 within the 1.25 miles of the plant. But unless -- there
23 are some studies that I've yet to see that draw those
24 links. I don't know how you could say that they were a
25 substantial cause. I know that -- in other words, I

1 don't think there's science behind it. There's
2 certainly reason to believe it's a cause, but not a
3 substantial cause. And that's one area of concern I
4 have. And I realize that's both an issue that neither
5 side will agree on in terms of how I'm thinking about it
6 and I'm happy to hear the parties' views.

7 As to the Dr. Anderson -- well, let me take up
8 Abraham first. With respect to Abraham, I think he can
9 testify to the things in his report. The only question
10 is really a summary judgment question is whether or not
11 you get to a jury if all you are able to prove is that
12 any exposure is a cause of injury because I really think
13 that's all Dr. Abraham is opining about.

14 And I suppose one could argue that even as to
15 Mr. Parker, his statements as to significant pockets of
16 exposure are something that I wouldn't necessarily
17 exclude as evidence. The only question is is it
18 sufficient evidence to support a finding by a reasonable
19 jury of those exposures being a substantial cause absent
20 some solid studies indicating it is.

21 And that brings me then to Dr. Anderson, who does
22 want to provide the ultimate conclusion in this case,
23 ultimate legal conclusion in this case with respect -- I
24 should say he claims to provide the ultimate legal
25 conclusion in at least the way he's phrased his opinions

1 in this case, and that is that the nonoccupational
2 exposures were a substantial cause of the mesotheliomas.
3 I'm going to get there yet.

4 As to that opinion, I'm troubled whether it is an
5 appropriate one, at least in its current form, to go to
6 the jury because it subsumes the ultimate legal
7 question. I'm more concerned with what it means. And
8 now I'm talking about both legally and as specific to
9 Dr. Anderson. I'm not sure I got a satisfactory answer
10 as to what he means by a significant cause other than
11 that somewhere there's a range of exposure -- I should
12 say substantial cause -- other than there's a range of
13 exposure that constitutes a substantial causative factor
14 and that for various reasons he assumes that here -- let
15 me see if I can turn that off. Says we're not
16 connected, but I imagine that's an automatic feature.

17 So I say that by way of general comments and I'm
18 happy to hear from both sides before we close the record
19 in this hearing. Because it's your motion, I'll hear
20 from Weyerhaeuser first.

21 MS. ELLIS: Thank you, Your Honor. Much of
22 what the Court is discussing about the trouble with sort
23 of the medical aspect of substantial factor as opposed
24 to the legal aspect of it is something that has been
25 ongoing, I think, and is being played out in the case

1 law as we speak. There is a long line of cases now that
2 are rejecting this cumulative exposure theory for this
3 exact reason that --

4 THE COURT: And on at least a number of cases
5 that are accepting even the notion of marginal causation
6 being sufficient.

7 MS. ELLIS: Yes, Your Honor, that is right.

8 THE COURT: That doesn't really get me anywhere
9 either.

10 MS. ELLIS: We've got things on both sides of
11 the fence. I think the *Krik* opinion that has recently
12 come out of the Northern District of Illinois is a very
13 good discussion and decision on the issue because the
14 court started with allowing the expert to testify but
15 striking the portions of his opinion on the *any exposure*
16 *can contribute*. And right before trial, the court
17 entertained argument from the expert in a Daubert
18 hearing outside the presence of the jury and the
19 court -- and the expert offered up this cumulative
20 exposure theory identical to what we're hearing here;
21 that cumulative exposure causes disease and you can't
22 rule out any exposure from the cumulative so therefore
23 it's a substantial contributing factor. It's a
24 substantial cause. And the *Krik* court said that's the
25 exact same thing as every fiber and it's been redressed

1 as cumulative exposure.

2 THE COURT: If that's what Dr. Anderson was
3 saying, every fiber -- I'm not precluding the
4 possibility that's what he's saying, but that's not how
5 I understood his testimony -- then I would lean towards
6 excluding it. But he seems to be saying that there's
7 sufficient exposure here, that it's a significant factor
8 and to be relying on the epidemiological studies from
9 other countries that have singled out causations other
10 than occupational exposures. And to the extent that I
11 accept those and I accept -- and this is a big caveat as
12 well -- I accept that the individual plaintiffs were
13 significantly exposed, which is what I understand the
14 studies to require by nonoccupational asbestos, there is
15 some science to support it.

16 MS. ELLIS: The studies that Dr. Anderson
17 relies on do stand for and support the proposition that
18 environmental exposures can cause mesothelioma.
19 Household exposures can cause mesothelioma. In those
20 settings where they found large numbers of that exact
21 condition in place, the dose, the exposure that occurred
22 there resulted in those diseases. And the Bourdés study
23 that Dr. Anderson --

24 THE COURT: Let's use an example here. You
25 have at least a few individual plaintiffs who lived for

1 substantial periods of time within the 1.25 mile zone --

2 MS. ELLIS: Yes, Your Honor.

3 THE COURT: -- of concentration, so presumably
4 they got some significant doses and under these studies
5 that could well cause mesothelioma. So then the
6 question is -- and this gets into the chicken and egg.
7 If you have -- if we look at overall odds, I think you
8 have the better of the case; that is to say, if you
9 picked any one person out with mesothelioma, even with
10 those exposures the chances that that person has
11 exhibited the symptoms when and how they did are
12 substantially higher for work exposure. But I'm not
13 sure that's enough. I'm not sure under the law.

14 If they can show that there is a significant
15 contributor or significant exposure in nonoccupational
16 settings raises your odds, I don't know what that is.
17 But if the data was, as described at one point using
18 overall data, that it's a very small likelihood, one in
19 a million, four million or liberally ten -- let's try it
20 again. .0001 percent, .0004 percent or 1 to 10 percent,
21 then the relative risk or the relative likelihood is
22 very, very small. But that's, accurately stated, the
23 chances in the population as a whole whereas if someone
24 has it, I'm not sure that those are the appropriate
25 statistics. Once someone has it -- I'm trying to think

1 of the name of the statistical anomaly, it's come up a
2 lot in false positives in the risk of doing certain
3 kinds of tests because there are so many more false
4 positives in a population as a whole as opposed to
5 people that actually have the disease come a lot in
6 approving cancer testing. In any event, once we're down
7 to the individual who has it, if we know that the
8 combination of work and nonwork, at least for those
9 nonworkers who have significant exposure is a marginal
10 increase, not just a very small increase, and I don't
11 think that epidemiological studies would support that
12 kind of view as you would looking at a population as a
13 whole, then at least where that's been proven, and I'll
14 come back to that in a second, the significant exposure,
15 nonoccupational, I'm not sure that a jury isn't entitled
16 to at least decide if it was a substantial factor for
17 that plaintiff.

18 MS. ELLIS: I think our issue -- and I
19 basically agree with everything that Your Honor just
20 said with the gaping hole here for us is the level or
21 amount of exposure that actually occurred.

22 THE COURT: All right. So let's talk about
23 that. Let's -- the most extreme position is the
24 individual that I described who was in a household
25 within, let's say, somewhere within three or four blocks

1 of the plant for a substantial period of time as they
2 grew up or -- and/or as they worked at the plant. So
3 are you in agreement that we can go to trial with
4 respect to those or at least that Dr. Anderson ought to
5 be able to testify, whether or not it's at summary
6 judgment they lose for other reasons; in other words, if
7 that's evidence of significant nonoccupational exposure.

8 MS. ELLIS: Well, I think it goes back to what
9 we're just saying. There's no evidence here that
10 there's a significant exposure happening in 1.25 miles
11 of this plant. We have emissions --

12 THE COURT: I'm sorry. Go ahead.

13 MS. ELLIS: Even let's assume there are
14 emissions from the plant, asbestos-containing emissions
15 from the plant. And let's assume there are people --

16 THE COURT: Well, I don't know if we need to
17 assume. I think we know there were asbestos emissions.
18 I mean the level of them I grant you remains in dispute.

19 MS. ELLIS: Right.

20 THE COURT: But we know there were emissions.

21 MS. ELLIS: Okay. Yes, there are.

22 THE COURT: And we also know that -- and the
23 only evidence we have -- to the extent your client was
24 spewing, in the pejorative word, to the extent releasing
25 asbestos fibers, that already establishes negligent

1 conduct. So then the question is how much evidence of
2 causation is enough and the only evidence we have,
3 contemporaneous evidence is the plant's own measured
4 exposures. And I guess your argument is that those
5 exposures are not sufficiently high even within this
6 zone to be substantially causal. And I'm not quite sure
7 where we get there. We have two disputes as to what
8 substantially high is. I think the notion that it's
9 ambient, I think that's silly because anything above
10 ambient would mean we'd be going back to exactly what
11 you just talked about. Anything above ambient means any
12 kind of exposure other than naturally caused in the
13 environment.

14 But some of the epidemiological studies talk about
15 similar ranges of exposure within that zone to those
16 that were tested. And then you've got conflicting
17 measures, depending upon which one you rely upon, and
18 that's exactly why we end up with experts getting on the
19 stand saying this is important or this isn't important
20 and the jury has to make that determination.

21 MS. ELLIS: I think what we have -- the dots
22 haven't been connected between emissions from the plant,
23 let's call it asbestos emissions coming from the plant,
24 to asbestos in the community air to exposure. And just
25 because we have emissions from the plant, it doesn't

1 then end result go to exposure. You still have to put
2 the pieces together. In looking at epidemiological
3 studies that relate to places much different than what
4 we have here, and in particular when the experts haven't
5 told us how we can reasonably look at, you know, an
6 Italian asbestos plant that operated for 90 years using
7 15 times the amount of asbestos that was alleged here,
8 operating for four times longer and the list goes on and
9 on where they found 80 people living in the community
10 with meso with no other exposure, how can you take any
11 information from that study and put it on Marshfield
12 other than the general fact that occupational -- excuse
13 me, environmental exposure can cause mesothelioma in
14 certain settings. It says nothing about what we have
15 here.

16 THE COURT: Well, is it appropriate or why
17 wouldn't it be appropriate to allow the jury to consider
18 evidence of release into the community for those
19 individuals who spend substantial time within the
20 so-called zone of exposure at levels suggested by the
21 measurements by the plant? And I take -- I heard what
22 you just said which is that --

23 MS. ELLIS: Right.

24 THE COURT: -- the evidence of cause there is
25 not comparable because the exposures are so much greater

1 in epidemiological studies that we have from other
2 countries. Is there any other reasons besides that?

3 MS. ELLIS: I mean it's the exposure and the
4 duration of exposure and the incidence of disease that
5 shows up in those communities. And it's just -- to me
6 it's a wholesale difference. And it's, too, the
7 Daubert --

8 THE COURT: When you say disease that shows up,
9 you mean other than the mesothelioma?

10 MS. ELLIS: I mean the fact that there are --
11 not only are there mesos showing up in those
12 communities, there's 80 mesotheliomas showing up there.
13 I mean it is -- when you see something like that, you
14 can then can infer well then yes, there is an exposure.

15 THE COURT: Well, but, you know, that goes back
16 to the notion that you're dealing with much larger
17 population sizes than you're dealing with here. It
18 doesn't mean that there isn't an impact, if you get
19 someone who does have it, that there wasn't an impact.
20 And the way you measure it is by looking at similar
21 circumstances. And I guess at the end of the day the
22 argument is whether the circumstances are similar and
23 not that someone with a medical background and
24 epidemiological background could draw -- is drawing a
25 reasonable scientific link or at least one that he can

1 describe to the jury.

2 MS. ELLIS: And I know Your Honor doesn't need
3 us to tell you about the case law, but there is this
4 *Textron* case from the Seventh Circuit that addresses the
5 joiner problem when experts take studies that are
6 dissimilar from the facts and don't appropriately
7 connect the dots and don't appropriate walk through the
8 analysis.

9 THE COURT: I do find somewhat persuasive, and
10 I've got to go look at the study, but studies of studies
11 have proven increasingly more reliable than anything
12 else. To the extent that Dr. Anderson is accurately
13 describing that study, that might be enough to get him
14 there.

15 MS. ELLIS: So the Bourdés meta analysis, it
16 did -- it looked at six environmental studies that
17 ranged from -- I think there's three on asbestos mines
18 studies that are in there and then there are three
19 factory studies. One of the factory studies relates to
20 the Italian asbestos cement plant that we've spent a
21 great deal of time talking about. One of the mines is
22 the South African crocidolite mine. And in all of those
23 cases, all of those studies there were what I'll call
24 like a purely community mesothelioma identified, not
25 just one, but numerous. And Bourdés is the paper that

1 we put up that said you can't use these relative risks
2 and these numbers and put them on another population
3 unless you know that the exposure levels are comparable.
4 Otherwise it doesn't apply. And that gets to the very
5 heart of the issue.

6 THE COURT: Understood.

7 MS. ELLIS: Two quick points. The Casale,
8 Italy, which is where this Italian cement plant is
9 located, the population there is 40,000 people. And I
10 note that because this notion about, you know, the
11 population size and how, you know, that it would be
12 impossible in Marshfield for us to look for disease in
13 the community because it would never show up, I mean
14 that has not been sufficiently stated here.

15 THE COURT: On the other hand, isn't that part
16 of the problem with American studies is that unlike many
17 European countries, we didn't track most of this data.
18 We have a company -- in other words, if people weren't
19 self-reporting, and I don't know that they were even
20 identifying mesothelioma regularly or would look for it
21 in nonoccupational settings until more recently. If you
22 have contrary studies that indicate that's happened, I
23 didn't see those. It would be relevant to me if you
24 want to refer those --

25 MS. ELLIS: I will.

1 THE COURT: -- to me before we're done today or
2 you can mark them and provide them as part of the -- I
3 assume they're attached to the expert reports that
4 you've named and those studies would be relevant.

5 MS. ELLIS: Last point on that, Your Honor, is
6 that Wisconsin has actually been tracking mesothelioma
7 diagnoses from, I believe, 1990, maybe even before that.
8 So every -- it's statutory. Every diagnoses of
9 mesothelioma must be logged into this database.

10 THE COURT: Which makes my point though. 1990
11 is not a period we're dealing with.

12 MS. ELLIS: Well, with the latency period that
13 is associated with mesothelioma and the allegation here
14 is that the last year we're talking about exposure is
15 1978, it actually puts you -- it makes this information
16 that they do have very relevant. The plaintiffs we're
17 here talking about today were diagnosed in 2013/'14.
18 Modern day. So it's -- there are --

19 THE COURT: And those studies are showing what
20 in Wisconsin?

21 MS. ELLIS: Well, I hope I didn't misspeak.
22 There's not a study, it's just that --

23 THE COURT: Well, they have the data.

24 MS. ELLIS: Right.

25 THE COURT: But your clients haven't done that

1 study any more than the plaintiffs.

2 MS. ELLIS: No, Your Honor, we have not.

3 THE COURT: Which I guess is one of the problem
4 with you didn't do this if you've already -- if there's
5 already been liability established. Although granted
6 here as to occupational, it's not anything that's
7 compensable beyond workman's compensation.

8 Let me just mention a couple of things and then if
9 there's something more you have. Can you help me with
10 respect to the specific individuals who did not live or
11 spend significant time within the so-called zone of
12 exposure among what I'm calling the plaintiffs?

13 MS. ELLIS: Right. So the plaintiffs who did
14 not live at any point in time within the 1.25 miles are
15 Mr. Masephol; Mrs. Treutel, which is the Jacobs case;
16 and there is Mr. Seehafer, who he lived I think two
17 months -- two or three months was the allegation. And
18 then Mr. Boyer lived in 1.25 miles, I believe, three
19 years.

20 THE COURT: Okay. And as to Boyer and perhaps
21 others, there is an assertion that they went to school
22 within that distance, which would be a fair amount of
23 exposure over the course of 12 years, something like
24 that.

25 MS. ELLIS: Well, if exposure is time, then it

1 is a period of time that he would have been spending
2 hours a day there. But time doesn't account for, as the
3 Court pointed out earlier, the frequency and intensity
4 of exposures, which is --

5 THE COURT: And I suppose the other problem is
6 that epidemiological studies suggest far lower risks for
7 nonhousehold exposure.

8 MS. ELLIS: Right.

9 THE COURT: All right. The other question is
10 just one of how to make sense of these two lung cancer
11 cases given the evidence of pleural plaques, whether
12 that at least gets them to the same situation -- the
13 evidence of pleural plaques gets them to the same
14 situation as those diagnosed for mesothelioma.

15 MS. ELLIS: I sometimes just call it meso. You
16 can just say meso.

17 THE COURT: No, I can't.

18 MS. ELLIS: Shorthand.

19 THE COURT: Mesothelioma. Anyway, go ahead.

20 MS. ELLIS: So the pleural plaques in the lung
21 cancers, the pleural plaques are considered, I think, as
22 a marker of exposure. So if the pleural plaques show
23 up, then it might be an indication there has been
24 asbestos exposure. It certainly would say nothing about
25 where the exposure came from.

1 THE COURT: Agreed. But I just want to -- in
2 thinking about it, it says to me -- one way to think
3 about it is that the presence of the pleural plaques
4 puts them in the same category as the other plaintiffs
5 before we talk about causation.

6 MS. ELLIS: So I think Helsinki in the most
7 recent draft, I don't have a copy of it in front of me,
8 but Helsinki talks about what's required to link a lung
9 cancer to asbestos exposure and I think it expressly
10 states that pleural plaques are not enough by themselves
11 to make that association. And there has to be that very
12 significant exposure there and it is significant,
13 meaning more than what you look for in a mesothelioma
14 case. It has to be there.

15 THE COURT: All right. Anything more that you
16 wish to add before I hear from plaintiff?

17 MS. ELLIS: I would just say pleural plaques
18 are consistent with an occupational exposure.

19 Last thing I would like to say, Your Honor, is that
20 the Maule study, which is the 2007 Italian study where
21 the 27.5 came from and the 10.5 that we've all looked
22 at, the 10.5 relative risk for environmental exposures
23 is for people living at zero kilometers from the plant.
24 And I can't exactly tell you if that means that the
25 folks were living on the plant site, but they were

1 living very, very close to the plant. So the 10.5 is
2 not a -- it's not the 1.25. When they expand out from
3 zero to three kilometers, kilometers, the risk goes down
4 to 6.8. And it is very much -- the studies discuss this
5 decreasing risk with distance from the plant. So it's a
6 point that I wanted to make.

7 And I think --

8 THE COURT: I get it. I'm not sure it changes
9 the overall analysis but that puts you, if you were to
10 pursue it with some kind of gradation, still say within
11 one kilometer and substantial -- I don't want to use
12 substantial. There may be a significant exposure.

13 MS. ELLIS: Right.

14 THE COURT: Understood. Thank you. Mr. Finch.

15 MR. FINCH: Start with the epidemiology. You
16 had probably the most well-credentialed epidemiologist
17 in the state looking at epidemiology studies relating to
18 community or neighborhood exposure. And he --

19 THE COURT: I think that might be Pat
20 Remington. But he's probably really good too.

21 MR. FINCH: Dr. Anderson was -- is the head of
22 the Department --

23 THE COURT: I'm teasing. I apologize. Go
24 ahead.

25 MR. FINCH: All right. The point is none of

1 the -- remember how they showed those studies on the --
2 the six studies he looked at? They used the amount of
3 asbestos tons by tonnage used in the plant and the
4 number of years. They didn't have any fiber level
5 measurements in the air because there aren't any. They
6 didn't have evidence in those studies about dust,
7 visible dust emissions like they have here.

8 What you have is you have studies of people who
9 live in a vicinity of asbestos point source emission to
10 have excess disease. An epidemiologist looks at that
11 and says this is comparable and this is not. All their
12 criticisms that they have, well, if it wasn't perfectly
13 lined up, you should have used this, you should have
14 used that, that's perfect fodder for cross-examination
15 but it doesn't mean he doesn't have a sound scientific
16 basis for his opinion that the neighborhood exposure,
17 environmental exposure can be a risk, can cause
18 mesothelioma by itself. And that is supported not only
19 by the studies, he said it's supported by the Helsinki
20 criteria itself which talks about a significant
21 environmental exposure can cause mesothelioma.
22 Environmental exposures have lower risk than
23 occupational exposure, but it can still by itself cause
24 mesothelioma. So --

25 THE COURT: Cause is not the question.

1 Substantial cause is the question.

2 MR. FINCH: I -- here is --

3 THE COURT: You anticipated that.

4 MR. FINCH: Here is the way -- doctors don't
5 walk around saying something is a substantial cause.

6 THE COURT: Your doctor just did.

7 MR. FINCH: Because he's in a courtroom and
8 he's asked --

9 THE COURT: Well then he shouldn't -- he can't
10 opine as a medical expert and use legal terminology.
11 You're kind of making the point I tried to emphasize. I
12 don't know how I let him say that if it's not something
13 doctors talk about.

14 MR. FINCH: Well, it happens all the time in
15 almost any kind of tort litigation that I've ever done,
16 whether it's med mal or doctors don't necessarily go
17 around talking about the appropriate standard of care
18 outside of a courtroom. They don't talk about to a
19 reasonable degree of medical probability outside of the
20 courtroom. Those are words that they say because judges
21 require them to say it.

22 But the way -- it is a medical fact that as you
23 have increasing dose of asbestos, you have increasing
24 likelihood of disease. Once you have the disease, the
25 cumulative exposure causes these. Is every exposure a

1 substantial cause? No, it's not. And I don't think he
2 was saying that. I think what he was saying --

3 THE COURT: No, I agree. He wasn't saying
4 that. The question is --

5 MR. FINCH: He was not saying that.

6 THE COURT: -- what does he mean by a
7 substantial exposure --

8 MR. FINCH: What he means by a substantial --

9 THE COURT: Just let me finish.

10 MR. FINCH: Sure.

11 THE COURT: He means substantial exposure in
12 whatever way Dr. Anderson was suggesting it. But it's
13 not at all clear since I don't know, since I don't think
14 any of us in the courtroom could tell you definitely
15 what substantial is when it comes to cause in these
16 cases, it's meaningless.

17 Now having said that, I agree. Your point is a
18 good one that reasonable care is also sort of an
19 uncertain term that we allow experts to give meaning to.
20 So --

21 MR. FINCH: And --

22 THE COURT: -- perhaps that's where we are.
23 But there is some gatekeeper role for the Court where --
24 and maybe all I'm saying is this comes back to what is
25 significant exposure and if the epidemiological studies

1 tell us that it's within this one mile roughly,
2 approximately one mile zone, then have you come forward
3 with enough evidence.

4 MR. FINCH: I believe we have given Dr. -- both
5 Dr. Anderson's testimony and Mr. Parker's testimony.
6 But --

7 THE COURT: Well, I mean you could point it to
8 me because we're down to a specific number of
9 individuals. Mesothelioma exposure within 1.25 miles is
10 what?

11 MR. FINCH: But in addition to the -- in
12 addition to -- there's another piece of this. It's not
13 just living in the -- within the 1.25 miles, it's also
14 the household exposure, the exposures that occur in the
15 household as a result of dust being brought in the
16 household from --

17 THE COURT: I understand. But the reality is
18 that the greatest concentration is in that area and you
19 have to get an individual placed there or convince me
20 that there's been substantial additional exposure. For
21 example, if both parents were working and bringing that
22 home.

23 MR. FINCH: Well, I think what the household
24 literature is, which is the 1976 study, the Anderson
25 study, it didn't matter how far you lived from the plant

1 if you come home every day with asbestos dust on your
2 clothes and then that dust --

3 THE COURT: Well, but the coming home every day
4 with asbestos clothes isn't enough because we know that
5 we exclude it for that worker. So it would have to be a
6 spouse or perhaps parents.

7 MR. FINCH: Right. And for Mr. Masephol, for
8 example, his father was work occupationally exposed,
9 brought the dust home on his clothes. That's not the
10 problem.

11 THE COURT: For how long?

12 MR. FINCH: From 1948 to 1982.

13 MS. ELLIS: Sorry, that's actually not right.

14 MR. FINCH: Okay. From Weyerhaeuser --

15 THE COURT: I'm sorry, instead of everyone
16 jumping in.

17 MS. ELLIS: I apologize.

18 THE COURT: Your answer with respect to
19 Weyerhaeuser exposure or the Weyerhaeuser plant we're
20 calling it --

21 MR. FINCH: Right.

22 THE COURT: -- is from what period?

23 MR. FINCH: '55 to his father stopped living
24 there in 1982.

25 THE COURT: So '55 to '82. 27 years.

1 MR. FINCH: Yes. That's not --

2 THE COURT: And he would have been bringing it
3 home.

4 MR. FINCH: That the dad would have been
5 bringing it home.

6 THE COURT: On his clothes. Understood.

7 MR. FINCH: And for some period of time,
8 Richard Masephol, who got mesothelioma, was working in
9 the plant. So that exposure is barred by worker's comp.
10 But he has household exposure and he didn't live in the
11 environment but the household exposure by itself can
12 cause mesothelioma.

13 THE COURT: But the household exposure being
14 the father being --

15 MR. FINCH: Correct. Being the father
16 bringing --

17 THE COURT: I understand.

18 MR. FINCH: Being the father --

19 THE COURT: That's what we just talked about.

20 MR. FINCH: Right. And that's the second piece
21 of Anderson's -- Anderson says there are three types of
22 exposure that have been shown in the literature that can
23 be causative. And if it's enough to cause it by itself,
24 it can be substantial if you've got a person that has
25 that kind of exposure in their life. That's what it

1 boils down to.

2 THE COURT: Well, you say that, but I'm not
3 sure that's true in the studies. So I'm not sure it's
4 true that particularly in the study of studies that
5 that's what was meant by household exposure.

6 MR. FINCH: No. The studies -- the study of
7 studies was environmental exposure. The study I'm
8 talking about is the household exposure, Anderson's
9 paper from 1976 which showed a substantially significant
10 percentage of people that are household contacts of
11 asbestos workers having pleural plaques, asbestosis, and
12 some of those people got mesothelioma, some of those
13 people got lung cancer. That is --

14 THE COURT: I'm with you now.

15 MR. FINCH: And then there are some earlier
16 studies that he talks about in that '76 paper that he
17 didn't do, but they're in the literature which I think
18 we attached to our brief. There's the Newhouse/Thompson
19 study from '65 and even Wagner had a few household
20 contacts. So that's the other piece of it. And so --

21 THE COURT: And with respect to Treutel?

22 MR. FINCH: With respect to Ms. Treutel,
23 husband, daughter and son were working in the
24 Weyerhaeuser plant in the 60's and up through 70.

25 THE COURT: The husband for what period of

1 time?

2 MR. FINCH: The husband -- well, as to
3 Weyerhaeuser, it will be from whenever Weyerhaeuser took
4 it over, from 1960 to 19 -- excuse me, 1955 to 1984.
5 The daughter worked there for two summers, and then the
6 son worked there for one summer.

7 THE COURT: So we're really talking about an
8 exposure period of 19 years in the home.

9 MR. FINCH: Correct.

10 THE COURT: No. Actually you said '84?

11 MR. FINCH: '55 to '84.

12 THE COURT: Actually 29 years. Okay.

13 MR. FINCH: So if you back out, if you say '55
14 to '79, that is 24 years.

15 THE COURT: Okay.

16 MR. FINCH: And if you add the months for the
17 kids that did that, give or take 24 years.

18 THE COURT: Understood. Thank you. Seehafer.

19 MR. FINCH: The last one? Seehafer? I don't
20 think there was any household exposure for Mr. Seehafer.

21 THE COURT: And it doesn't appear there was any
22 for Boyer either; is that correct?

23 MR. FINCH: Mr. Boyer -- his father, yeah, his
24 father -- no, I'm sorry. Yeah, his father worked there
25 and mother. From '55 to '78 would be the father, and

1 the mother worked there 1963. And he also -- Mr. Boyer
2 is the guy who attended the high school less than a mile
3 from the plant and lived there too within the 1.25. So
4 I think the one that --

5 THE COURT: I'm sorry, for how long?

6 MS. ELLIS: Three years.

7 MR. FINCH: Four years. '79 to '83.

8 THE COURT: So the father was working --

9 MR. FINCH: Excuse me. I'm sorry. He lived
10 two or three blocks from the plant from '78 to '79 and
11 he lived a mile from the plant from '79 to '83. Then
12 the father was working from '55 until whenever they
13 stopped using asbestos in '78.

14 THE COURT: You said '78. Okay. So 23 years.

15 MR. FINCH: Yeah.

16 THE COURT: All right.

17 MS. ELLIS: Your Honor --

18 MR. FINCH: So he's got all three.

19 MS. ELLIS: Can I just interject one thing?

20 THE COURT: You can in a moment.

21 MS. ELLIS: Okay.

22 THE COURT: Are you done with your comments
23 then?

24 MR. FINCH: Yes.

25 THE COURT: Okay. Then that's an appropriate

1 time if you wanted to add something more.

2 MS. ELLIS: Thank you. I didn't mean to
3 interrupt. It's just these years are not in line with
4 the facts because the experts have testified that the
5 time period they're looking at is 1956 to 1978 is the
6 relevant time period.

7 THE COURT: Well, we're not off by very much
8 then. Instead of '55, it should be '56?

9 MS. ELLIS: Yes. And then with the second
10 caveat that Weyerhaeuser picks up in 1960. So the
11 relevant period for Weyerhaeuser would be 1960 to 1978.

12 THE COURT: All right. Are we -- is there any
13 disagreement with that?

14 MR. MCCOY: There is, Judge, with the period
15 before where it was Roddis, that's a continuation
16 because there was just a merger-type situation. There's
17 still liability.

18 THE COURT: So they accepted the liability?

19 MS. ELLIS: No, Your Honor. That has not
20 been --

21 THE COURT: Was it an asset purchase or was it
22 a corporate merger?

23 MS. ELLIS: It was an asset purchase.

24 THE COURT: Why do you say it was not an asset
25 purchase?

1 MR. MCCOY: I don't have that right in front of
2 me, but I would have to provide that.

3 THE COURT: If you have evidence that it was
4 not an asset purchase and that liabilities were
5 accepted, would you share that with plaintiffs' counsel
6 -- I'm sorry, defendants' counsel. If you can't agree,
7 then you can each file something by -- where are we --
8 by Friday explaining -- actually why don't we say by
9 Monday explaining your position.

10 MR. MCCOY: Yes, sir.

11 THE COURT: It shouldn't be very hard to do
12 with the corporate documents.

13 MR. FINCH: You're just talking about the years
14 '55 -- '56 to '60?

15 THE COURT: That's exactly right. That's what
16 we're talking about. Okay. Actually would it be '56 to
17 '60?

18 MR. FINCH: '56 to '60 with Roggis. '60
19 Weyerhaeuser took it over, either by assuming the
20 liabilities or not. I don't think from Dr. Anderson's
21 testimony -- I'm sorry, Your Honor, I should stand. I
22 didn't think from Dr. --

23 THE COURT: You don't need to stand. Doesn't
24 matter to me. But in any event, I got it. So you can
25 advise me by Monday whether you think there's some issue

1 with respect to the appropriate periods of time. And I
2 take your point that four years one way or the other
3 probably doesn't change my ruling as to the testimony of
4 the experts.

5 I do appreciate the quality of the comments today
6 and of your efforts to be streamlined in your
7 presentation with the witnesses. I do find this one of
8 those fascinating questions which I used to tell me
9 clients is never good news for the client, but I will
10 try to do my best with it.

11 Was there something -- you're both standing at this
12 point, so was there something more the plaintiff wanted
13 to add?

14 MR. FINCH: No, Your Honor. It has been a
15 privilege. Thank you.

16 THE COURT: Something more for the defense?

17 MS. ELLIS: Last point. I don't want to
18 belabor things. In the take-home context, I think it's
19 worth noting that the jobs that the spouses had or
20 family members had, none of them involved working with
21 asbestos products at the plant. And so to the extent
22 that we're talking about a worker working at the plant
23 and then coming home, there's been this assumption that
24 the workers were bringing asbestos home and again, it is
25 a problem. It goes back to -- everything we're talking

1 about here today is sort of connecting how it is that
2 the worker accumulated enough asbestos on his or her
3 clothes and then transported it into the house and
4 created some dosage there.

5 THE COURT: And so we're clear, when you say
6 working with asbestos, what do you mean? In other
7 words, what would be occupations within the plant in
8 which they worked with asbestos?

9 MS. ELLIS: Let me give you an example in one
10 of the cases, which would be the Prust case. Mr. Prust
11 is our plaintiff. Deceased. He has lung cancer. His
12 wife, Mrs. Prust, also worked at the plant. Mrs. Prust
13 worked on the second floor in a building that's been
14 referred to -- it's called the core mill. The second
15 floor of the core mill was where they worked exclusively
16 on venire, which is nothing but wood.

17 THE COURT: I'm with you.

18 MS. ELLIS: They are installing, sanding, et
19 cetera. So the first floor of that building which was,
20 I forget the size, it's a gigantic floor like 400 feet
21 by 200 feet. I can't remember. So very, very large
22 floor. But on the north end of that floor is where the
23 sanding and sawing of mineral core occurred.

24 THE COURT: All right. Let me ask you another
25 question. Is there agreement -- and I'll begin with

1 you, Ms. Ellis. Is there agreement that each of the
2 plaintiffs here, and by that I mean those for whom there
3 is a claim being sought, all worked in this first floor
4 sanding area?

5 MS. ELLIS: It may not be that first floor
6 sanding area. There are other places in the mill where
7 they're working with the asbestos product.

8 THE COURT: The asbestos cores.

9 MS. ELLIS: The asbestos core, that's correct.

10 THE COURT: And is there agreement that all of
11 the plaintiffs worked with asbestos cores?

12 MS. ELLIS: Can I confer really quickly about
13 that?

14 THE COURT: You certainly may. And why don't I
15 hear from plaintiff on that subject. Do you know,
16 Mr. Finch?

17 MR. FINCH: Mr. McCoy will answer that.

18 MR. MCCOY: Judge, I will say that the experts
19 were provided in their reports and it lays out exactly
20 what information they had about what another family
21 member was doing in terms of occupational exposure to
22 asbestos.

23 THE COURT: Which isn't my question. My
24 question is with respect to the plaintiffs, those people
25 who actually are claiming cause of injury --

1 MR. MCCOY: I understand.

2 THE COURT: -- were they working with asbestos
3 cores during their work life.

4 MR. MCCOY: Not all were on that first floor
5 where there was the cutting and sawing operations.

6 THE COURT: What about with respect to the
7 other areas where there was work with asbestos cores?

8 MR. MCCOY: They all -- I'm trying to think.

9 MS. ELLIS: I believe --

10 THE COURT: Counsel, that's the second time
11 you've done that. I don't understand.

12 MS. ELLIS: I'm sorry, Your Honor.

13 MR. MCCOY: Judge, they all had some
14 occupational exposure to asbestos and it's laid out.
15 They're so diverse, it's hard to even describe it.
16 They're laid out to the experts. We gave them that.

17 THE COURT: Ms. Ellis, it sounds like the
18 parties are in agreement on that point.

19 MS. ELLIS: Yes, Your Honor. I apologize.

20 THE COURT: That's fine. Was there anything
21 more then for the plaintiff today?

22 MR. FINCH: No.

23 THE COURT: Anything more for the defense?

24 MR. MCCOY: Judge, I just want to correct one
25 more point on this history of exposure. For

1 Mr. Masephol, we later got some records about his
2 father's work that may not have been in the expert
3 report. And I know Mr. Finch here made a mention of a
4 time period. The later records showed that it was about
5 half of that actual time period where his father was in
6 occupational exposure to asbestos. So although the
7 period was like 24 years where he was with his father,
8 the actual occupation, the actual take-home exposure
9 time was about half that.

10 THE COURT: And you're saying that because
11 during the other portion --

12 MR. MCCOY: He was farming or something like
13 that.

14 THE COURT: I'm sorry?

15 MR. MCCOY: He was farming or doing
16 nonexposure, but his father was not getting exposed to
17 asbestos.

18 THE COURT: So 13 to 14 years would have been
19 the period even if we go all the way back to '56.

20 MR. MCCOY: There's much closer, yes.

21 THE COURT: Thank you. And again, thank you,
22 Counsel, for your efforts. I did find both sides'
23 presentations extremely helpful and they do help focus
24 me. I'm not sure how much is determinative of the
25 motion before me, but it is certainly important to my

1 overall understanding of this case and so I'm glad we
2 spent the time. Whether the parties feel it was
3 worthwhile or not, it was helpful.

4 MR. FINCH: Your Honor, may we have until close
5 of business tomorrow to get the exhibits to Your Honor?

6 THE COURT: Absolutely. That's fine. As long
7 as you get it on file the end of the day tomorrow is
8 perfectly fine. When I said file, you're welcome to do
9 it electronically if that's --

10 MR. FINCH: Because people are traveling to
11 various places.

12 THE COURT: Understood. Let's make it simple.
13 Any submission is due by the end of the day on Monday
14 and we'll just leave it at that.

15 MR. FINCH: That would be better.

16 THE COURT: Thank you very much. We're
17 adjourned. You're free to move about as you wish.

18 (Proceedings concluded at 3:14 p.m.)

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1 I, LYNETTE SWENSON, Certified Realtime and
2 Merit Reporter in and for the State of Wisconsin,
3 certify that the foregoing is a true and accurate record
4 of the proceedings held on the 3rd day of December 2015
5 before the Honorable William M. Conley, Chief Judge for
6 the Western District of Wisconsin, in my presence and
7 reduced to writing in accordance with my stenographic
8 notes made at said time and place.
9 Dated this 8th day of December 2015.

10
11 /s/ _____
12 Lynette Swenson, RMR, CRR
13 Federal Court Reporter

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